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No. 2728

# UNITED STATES CIRCUIT COURT OF APPEALS

## FOR THE NINTH CIRCUIT

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation,

Appellee.

---

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owners and insurers of said cargo,

Appellee.

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# APOSTLES ON APPEAL

(In Five Volumes)

(Vol. 4—Pages 913 to 1216)

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From the United States District Court for the Western District of Washington, Southern Division.

SHERMAN PRINTING & BINDING CO., SEATTLE, WASH.

Filed
JAN 5 1916
F. D. Monckton,
Clerk

Testimony of HENRY TRIPPENSE:

speed ahead all the way along, and you cannot keep any count of that.

Q. After you cleared from the vessel?

A. There are all the bells when we cleared away.

Q. Here is 8:58 and 10 o'clock?

A. We were going very slow then.

Q. You came into Tacoma very slowly after the collision? A. Yes, sir.

Q. And did not keep any record of the revolutions at all? A. No, sir.

Q. Your log book shows you came into collision at 7:58, and that you went full speed astern at 7:58?

A. Yes, sir.

Q. That was the entry you made from the information you received at the time from the book, from that small book? A. Yes, sir.

Q. And at that time you did not know there was anything wrong with this entry?

A. I entered that from the small book when it came up out of the engine room.

Q. And you thought it was all right?

A. I had to take it out of the book. I always take out,—I cannot do anything else but to put it down.

Q. You would not put it down if it was wrong, would you?

A. Well, I tell you I never saw anything wrong in that book, and I didn't ask any questions, and I put it down the way it came up on the book.

Q. Were you on this vessel when Captain Green joined her? A. Yes, sir.

Q. This is a twin-screw vessel isn't it? A. Yes.

Q. Have you ever observed in what distance this vessel could turn? A. No, sir.

Q. She can turn very sharply, couldn't she?

A. That depends on what we do with her.

Q. When she is light, with no more than two thousand tons? A. Yes, sir.

Q. Can she turn rapidly then?

A. Well, very rapidly, with one engine going ahead ane one astern.

Q. And in what distance would it require her to turn?

A. I do not know what distance, I couldn't tell you within half a mile.

Q. Captain Green thought it would take five minutes when this vessel were loaded, to stop her headway, do you think that is about right?

A. Well I guess I could do it quicker than that.

Q. And bring her to a standstill? A. Yes, sir.

Q. I see there is an entry here in this engineer's log book, the large one, that the starboard block was out of order? A. After the collision?

A. That broke during the collision?

A. After the collision.

Q. Did it break during the collision? A. No, sir.

Q. What broke it after the collision?

A. I don't know.

Q. How long after?

A. It was not broken; it just got caught.

Q. How long after the collision did you discover it?

A. Just after 8:09.

Q. Had it been catching before?

A. Not that we knew.

Q. You say you came out of the alleyway and went out on the deck? A. Yes, sir.

Q. Did you see anything when you got on deck?

A. No, sir.

Q. You did not see anything ahead of you at all?

A. I couldn't see ahead.

Q. And you went down below?

A. No, I stood around the engine room platform.

Q. You went back into the engine room?

A. Yes, sir.

Q. How long did you remain on deck?

A. I cannot tell that; it might be two minutes or three.

Q. You came out on the starboard side of the ship?

A. Yes, sir.

Q. You were on the starboard side on the ship?

A. Yes, sir.

Q. And you may have remained out two minutes?

A. Might; I could not recollect the time right, how long I stayed out there.

MR. HAYDEN: I want to introduce both this log, the scrap log referring to the collision on the 12th.

WHEREUPON said books were marked libelant's S & T, respectively.

Q. You are not sure the ship was stopped when the collision occurred?

A. I could not be sure of that; I could not look in the water.

Q. Your engines were still running astern at the time of the collision? A. Yes, sir.

Q. And they ran astern how long after that?

A. That was in the book. I cannot give any time, I might guess about a minute and a half or something like that a minute and three-quarters, on a guess.

Q. You say it is in the book here? A. Yes.

Q. If you stopped and backed full speed astern for a minutes how far would you travel?

A. I couldn't tell you that.

Q. You haven't any idea? A. I have no idea.

Q. Doesn't the signal from the bridge indicate whether you are to go full speed astern or not?

A. The telegraph would indicate full speed astern.

Q. What do you do when your engineer gets telegraph, full speed astern, does he open her all the way out?

A. If it says full speed, he would open her all the way out, yes.

Q. You don't know whether he got telegraph to go full speed astern or not?

A. No, sir, I could not see that.

Q. Can you tell whether after receiving the signal to stop, from where you were standing, the signal was to go astern or ahead? A. Yes, sir.

Q. You could tell that by the movement of your engine?

A. By the movement of the engine, yes, sir.

Q. And you could tell whether she was open ful' out, by the movement of the engine?

A. No, sir, I could not see that.

Q. Why was it necessary for you to give the engi-

neer the signal to go full speed astern, when he had already received one from the deck?

A. That is what he would have to stand by; that something has occurred; sometimes he cannot hear the whistles from the other ship.

Q. The four whistles from the other ship occurred quite a little while before your three whistles?

A. No, the three whistles were right after that.

Q. Immediately after?

A. It may have been a second or so.

Q. There was some little time elapsed?

A. I heard the four whistles and the three whistles right on top of that.

Q. And then how long was it before the collision, after that?

A. I could not say, because I looked down in the engine room and then came out of the engine room, walked through the ally, came out on the deck and went aft, and then the collision occurred.

Q. It occurred when you were on the deck?

A. Yes, when I was on deck.

Q. And you could not see anything ahead of you at all?

A. No, sir; I came out and everything was dark.

Q. And you stayed outside for two minutes?

A. Not quite, but around there.

Q. And your eyes would not adjust themselves in that time?

A. No, sir, because it is all light around where we are, even on deck it is light.

Q. So you were reversing for two minutes?

A. I did not mention any time; that is, I thought it was over a minute. That is what what I say, around there. I did not mention any time, but that is the time in the book, and that is what I go by.

Q. You heard the whistles blow before you got the signal to stop, did you?

A. Yes, sir,—hold on,—there are three bells; there is one stop bell, one coming astern, and one stop. Which stop do you mean, the first one?

Q. Yes, the first one?

A. We were stopped before the whistles were given; we were going astern when the four whistles sounded.

Q. Did you hear any other whistles except those four; that is any passing whistles?

A. No, sir.

Q. You were walking in the same place?

A. I was walking in the same place, yes, sir.

Q. Did you hear the Flyer whistle when she went by you?

A. I cannot recollect that at all.

REDIRECT EXAMINATION.

(BY MR. HUGHES.)

Q. Do your oilers in keeping the engine bell book from which you make up your engineer's log, note fractions of a minute? A. No, sir.

Q. What are they required to do in that respect?

A. They are required to take the minute hand.

Q. For instance I notice in this small book you have a record leaving Seattle, stop, 6:31, and then again half speed astern 6:31. Now, it would not occur at exactly the same time? A. No, but it is in that minute.

Q. And the next is full speed astern, 6:32?

A. Yes.

Q. If the full speed bell had occurred between the minute 6:32, how would it be recorded?

A. The same as it is recorded.

Q. If it occurred before that time; you have two of them recorded 6:31, and if the full speed astern bell had been given before the minute hand reached 32 how would it be recorded?

A. It would be recorded the same.

Q. The same as preceding? A. Yes, sir.

Q. And in making up your log, you do not attempt to get at the fractions of a minute? A. No ,sir.

Q. But you recorded it just as it is given in the oiler's book? A. Yes, sir.

Q. That is kept in the engine room? A. Yes, sir.

Q. And that is what you did here, simply transcribed into your log the memoranda that you found in the bell book of the engine room?

A. Yes, sir, in the bell book.

Q. Except that you computed the actual revolutions and put them down?

A. Yes, I do that every 24 hours. You can go right back.

(BY MR. HAYDEN.)

Q. Do you mean to say that if a bell was given at three seconds to 6:31 you would record it as 6:30?

A. No; I don't say that, three seconds; we look at the minute hand and if it is closer to the minute that is ahead of it, we take that minute, if the minute hand is closer to it, and if it is closer to the other we take the first one. It might be that it is 7:40; 7:35 seconds, he would take that seven and the minute to it, one minute to seven, 1:40; 1:45; he did not look at the second hand at all, but only at the minute hand.

Q. Then if the minute hand were half way between 7:57 and 7:58, he would record that how?

A. He would record that 7:58.

Q. And if it were quarter way he would record it 7:57? A. Which way?

Q. Beyond the 7:57?

A. He would record that 7:57, if it is a quarter minute past the 57.

(BY MR. HUGHES.)

Q. If it is half a minute how would he record it?

A. The same way.

Q. As a matter of fact does not the man record it the minute until the next minute has practically been reached?

MR. HAYDEN: That is objected to as leading and suggestive, and cross examination of his own witness.

A. Practically; that is what I say, when he is close. Here is the man what takes the time, and he takes the time according to the minute hand.

(Witness excused.)

JULIUS SCHRAG, a witness called and sworn in behalf of the respondent, and claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

(BY MR. HUGHES.)

Q. Your name. A. Julius Schrag.

Q. What is your business? A. Oiler.

Q. On the Virginian? A. Yes, sir.

Q. How long have you been on the Virginian?

A. Nine months.

Q. How long a time did you go into this engine room before this collision occurred?

A. Fifteen minutes.

Q. You are required to report on duty how long before the other watch expires? A. Fifteen minutes.

Q. You went there at what time?

A. Quarter to eight.

Q. You were in the engine room up to the time of the collision were you? A. Yes, sir.

Q. Did you make the notes in this bill book as to the stopping and reversing of the engine?

A. Yes, sir, I did.

Q. Tell just how you came to do it and what you did?

A. At 7:57, or somewhere near, I don't know which, it may have been a half minute before, or three-quarters of a minute before 7:57, we got a stop bell.

Q. How did you come to make the entry?

A. I was standing underneath the ventilator, after I got through looking over the engine.

Q. Now you are required to be there so that you can look over the engine and see what condition everything is in before your time begins?

A. Yes, sir.

Q. You had done that? A. Yes, sir.

Q. And you were standing there when the bell came?

A. Yes, sir, under the ventilator.

Q. Is that in the forward part of the engine room?

A. Yes.

Q. Where is the log book?

A. It is right on the desk about twenty feet from the ventilator.

Q. You walked from where you were standing?

A. Yes, sir.

Q. Did the bell ring both starboard and port side?
A. Yes, sir.
Q. Did the two oilers have to answer that register?
A. Yes, sir.
Q. Did they do that?
A. Yes, they answered right away.
Q. How did you come to make the note in the book?
A. I went over to the desk and got the book and went back and took the time on the clock and marked it down.
Q. Then you walked across to the desk and picked it up? A. Yes, sir.
Q. Then what do you mean when you say you came back and took the time; where was the clock?
A. The clock is seven or eight feet back from the desk where the book is.
Q. Back towards the center of the engine?
A. Towards the forward.
Q. Is it suspended on the cross beam. A. Yes, sir.
Q. The clock is on the opposite side from the desk on which the log was laying. A. Yes, sir.
MR. HAYDEN: We object to this as leading.
A. Not on the opposite, about eight feet back from the desk.
Q. Eight feet back towards the ventilator?
A. Yes, sir, towards the ventilator where I was standing.
Q. Which side of the cross beam did the clock face?
A. Right in the center of the beam.
Q. Which way did face, towards the ventilator or the desk? A. Towards the ventilator.
Q. Did you have to sit back of it toward the ventilator to see the clock? A. Yes, sir.
Q. Then what did you do?
A. I went over to the desk, got the book and stepped back and took the time and marked it down.
Q. Now in taking that time, what can you say as to what the actual time was, so far as seconds are concerned?
A. I could not say how many seconds it took to get the book; I would judge about 35 seconds or forty.
Q. You recorded it as 7:57? A. Yes, sir.

Q. I want to know whether as a matter of fact you took any note as to what the second hand of the clock showed, or how did you get the time at 7:57?

A. I just took the time by the minute hand; which ever minute the minute hand was closer.

Q. How did you put the book back on the deck, or what did you do?

A. I put the bell book back in the desk and stood around the ventilator again.

Q. Did you observe another signal? A. Yes, sir.

Q. Could you tell what it was from the register?

A. Yes, sir. I looked at it, went and took the book again and walked back to the same place to get the time, and entered it in the book.

Q. You entered that as 7:58? A. Yes, sir.

Q. Can you say it was exactly a minute; the time that you entered the first one in this book to the time you entered the second?

A. I could not say whether it was exactly a minute; it might have been a minute and a half or a minute and forty-five seconds.

Q. Do you remember what you did with the log after that? A. I put it back on the desk.

Q. Did you get another signal?

A. We got another signal afterwards.

Q. What was that; was it a stop signal or what?

A. The last signal was a stop.

Q. Now did you record it as 7:59,—see here (indicating)? A. Yes, sir.

Q. That was a signal to stop the engine?

A. To stop the engines.

Q. Had you heard or noticed the shock of collision?

A. I had noticed quite a little shock.

Q. You felt a shock? A. Yes, sir.

Q. Did this occur; how quickly after the shock did you have this signal to stop the engine?

A. That I could not say exactly, how long it was.

Q. Did it appear to be quick or not?

A. Not very long after.

Q. Do you know what you had done, where you were, when that signal came?

A. I was standing in the same place, between the ventilator and the desk.

Q. What did you do?

A. I went back and got the book, stepped back to the clock and took the time and noted it down in the book.

Q. You recorded it as 7:59; can you tell whether it was a half a second or more or less?

A. No, sir, we never take seconds after the half minute; we always take on the minute.

Q. So that, are you able to say whether the time 7:59 is within 30 or 40 seconds of the exact position of the second hand of that clock?

MR. HAYDEN: That is objected to as leading and suggestive.

A. I can't tell by looking at the minute hand.

Q. But you are now able to say whether the time was actually 7:59 or whether it may have varied from that, and if so how much?

MR. HAYDEN: We make the same objection, as being leading and suggestive.

A. I could not tell how much it was.

Q. How much might it have varied?

MR. HAYDEN: Same objection.

A. It might have varied thirty seconds, or forty-five seconds.

RE-CROSS-EXAMINATION.

(BY MR. HAYDEN.)

Q. How far was this desk on which this small book was placed, from the ventilator? A. About 20 feet.

Q. And how far was the desk from the clock?

A. About 7 or 8 feet.

Q. Was the clock between the desk and the ventilator? A. Yes, sir.

Q. Was the clock facing the ventilator or the desk?

A. Facing the ventilator.

Q. When you heard the signal did you look first at the clock as you went to get your book?

A. No, sir, I got the book first and went back to the clock, and took the time and marked it down in the book.

Q. You did that after the first signal to stop was given you? A. Yes, sir.

Q. At 7:57? A. Yes, sir, after the first signal.

Q. And you did it after the signal to full speed astern was given you at 7:58?

A. I threw the book back the same way.

Q. But you walked from the ventilator to the book, got your book and went back and looked at the clock after you heard the full speed astern signal?

A. Yes, sir.

Q. So you placed the book back again on the desk after the full speed astern signal, walked back under the ventilator and remained there until you got the stop signal, and then walked up and got your book, came back and looked at the clock and put it down in your book; is that right? A. Yes, sir.

Q. How long did you remain under the ventilator between these signals?

A. I could not tell how long.

Q. Was it some little time after?

A. I would judge about a minute or a minute and a half.

Q. Between the signals? A. Between the signals.

Q. You think you remained under the ventilator a minute or a minute and a half between the signals?

A. I could not say exactly.

Q. You think it was something in that neighborhood?

A. It might have been less; that might have been half a minute or only 15 seconds.

Q. Then you don't remember at all how long you remained under the ventilator?

A. No, sir, not exactly.

Q. Suppose you took about the same length of time to walk from the ventilator to the desk and back again to look at the clock between each of the signals, did you?

A. Well, I would say I did take about the same time.

Q. When you got the signal to stop at 7:57 as you have recorded here, that signal may have been given anywhere between 7:57 and 7:57½, as I understand you? A. Yes, sir.

Q. And had it come between 7:57½ and 7:58 you would have put it down at 7:58? A. No, at 7:57.

Q. Then you did not record it the same way the chief did?

A. Well, I don't know; I am doing the recording down there.

Q. And then this signal to stop at 7:57, according to your recollection, might have been give nat 7:57 and three-quarters?

A. It might have been given at that time, or it might have been given before.

Q. Now when you put down that the collision occurred at 7:58, you mean that it occurred at the same time that you got your signal to reverse?

MR. HUGHES: I object to that as not cross-examination, and also misleading.

Q. Was there any book kept down there of these engines? A. Not for the bells.

Q. There was no other book kept down there?

A. No, sir; that is the only book down there that I have seen.

Q. Did you ever enter in any book the time of the collision? A. In the book there.

Q. Where is that? A. At 7:58.

Q. And how did you indicate that?

A. Here is the sign of it.

Q. What is the sign? A. Full speed astern.

Q. And that is the sign?

A. It is not a sign of the collision, but the sign that the engine had to go full speed astern, whether it is a collision or not.

Q. When did you enter in here that the collision occurred at 7:58, being the time the collision occurred, —you gave that entry to the chief?

A. No, I didn't give any entry at all; I marked down the bell, that is down here.

Q. Seven fifty-eight you say is the time that the collision occurred?

A. That is when we got the full speed astern bell.

Q. And that is the time the collision occurred?

A. No, sir, I don't say it is.

Q. That is what the log book says?

A. Well I didn't say that; it is not taken from here. What I did was to mark down what is in the book.

Q. In this small book marked Libelant's Exhibit D, you said a minute ago that the character M indicated when the collision occurred?

A. It indicates full speed astern.

Q. Then you want to change your statement that the character M indicated when the collision occurred?

MR. HUGHES: That is objected to as improper and misleading, and not proper cross-examination.

A. What statement?

(Question read.)

MR. HUGHES: I object to this as showing an evident purpose to wilfully entrap and mislead the witness.

MR. HAYDEN: Please read the question again.

(Question read.)

A. That character M does not indicate that the collision occurred at that time, but that the engines were full speed astern.

Q. You said in answer to my question that you had made in this book an entry when the collision occurred; what did you mean by that?

A. That I had down the time when the collision occurred; I haven't given that time, but when the bells came from the bridge; that is all I got down there.

Q. Will you, Mr. Stenographer, read the answer to the question where he says he entered in the book the time that the collision occurred?

(Testimony read.)

Q. What book did you enter in the time of the collision?

A. I did not enter in the time of the collision.

Q. Did you make any mark anywhere to indicate the time of the collision? A. No, sir.

Q. You did not? A. Yes, sir.

Q. You say you felt the jar of the collision?

A. A little bit, yes, sir.

Q. That occurred at 7:58 did it?

A. I do not know whether it was exactly 7:58 or 7:58½ or ¾ths.

Q. You haven't any recollection then of the exact time when it occurred? A. No.

Q. After you felt the jar of the collision; where

were you standing at the time you felt the jar of the collision?

A. At a couple of feet from the ventilator.

Q. Were you taking the time then?

A. I was taking the time when the bell came.

Q. Were you taking the time when you felt the collision? A. No, sir.

Q. Did you have that book in your hand?

A. No, sir.

Q. Had you put it back on the desk? A. Yes, sir.

Q. And were walking back to the ventilator?

A. Yes, sir.

RE-DIRECT EXAMINATION.

(BY MR. HUGHES.)

Q. Where were you when the collision occurred, do you remember?

A. Between the ventilator and the desk.

Q. Were you standing or walking, do you remember? A. I was walking around there.

Q. Have you any recollection how long it was after you had recorded the previous record in that way, in the bell book, or what you had been doing in the meantime?

A. I was standing there waiting for more bells to come.

(BY MR. HAYDEN.)

Q. This collision occurred before your regular time of going on that day? A. Yes.

Q. Where was the other oiler?

A. Down below with me.

Q. Why didn't he take the signals?

A. It is always the man who is nearest or handiest to take it.

Q. You were the nearest or handiest?

A. Yes, sir.

Q. Where was the other?

A. We were all standing around there.

Q. You and he were right together?

A. Pretty near all together.

Q. Why didn't he take the signal?

A. Because I was there first.

Q. You got there ahead of him? A. Yes, sir.

Q. And who was working the engines ahead and astern? A. The engineers.

Q. What were their names?

A. The first assistant and third assistant.

Q. Do you know their names?

A. Mr. Brett and Simpson.

Q. Are they aboard the vessel now? A. Yes, sir.

(Witness excused.)

Whereupon an adjournment was taken until 7:30 P. M.

7:30 P. M. Tuesday, March 19, 1912.

## STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective attorneys, that depositions may be taken in behalf of the respective parties before Earl E. Richards, a Notary Public, at room 613 Central Building, Seattle, Washington, at the hour of 10:30 o'clock a. m. on September 20, 1912, and may be transcribed and read in evidence in behalf of the respective parties with the same effect as though said depositions had been taken before the United States Commissioner to whom the taking of testimony in this cause was referred.

The signatures of the witnesses to the testimony as transcribed are hereby waived, and all other objections as to the time and manner of taking these depositions are hereby waived.

HUFFER, HAYDEN & HAMILTON,
Proctor for Libelant.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Respondent, Claimant and Cross-Libelant.

BALLINGER, BATTLE, HULBURT & SHORTS,
PAGE, MCCUTCHEON, KNIGHT & OLNEY,
Proctors for Cargo.

## DEPOSITIONS.

(Of Alfred Edward Draper et al.)

BE IT REMEMBERED, that on September 20, 1912, at room No. 613 Central Building, Seattle, Washington, at the hour of 10:30 o'clock a. m., before me, Earl E. Richards, a Notary Public in and for the state of Washington, appeared Mr. W. H. Hayden (of Messrs. Huffer,

Hayden & Hamilton), proctor for libelant, Mr. W. H. Bogle and Mr. Lawrence Bogle (of Messrs. Bogle, Graves, Merritt & Bogle), proctors for respondent, claimant and cross-libelant;

WHEREUPON the following proceedings were had:

ALFRED EDWARD DRAPER, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name, Mr. Draper? A. Alfred Edward Draper.

Q. What is your business?

A. Steamboat pilot, I suppose.

Q. Have you a master's license?

A. Pilot's license.

Q. How long have you held that license, Mr. Draper? A. Six years.

Q. How long have you been following steamboating? A. Oh, possibly ten years.

Q. What waters does your pilot's license cover?

A. Puget Sound and adjacent inland waters.

Q. What boat are you on at the present time?

A. Called the "Salmora".

Q. What is her run?

A. From Tacoma to Anacortes.

Q. What size boat is she?

A. She is 75 feet in length, I think, and 30 tons.

Q. You are master of the "Salmora"?

A. Yes sir, master of the "Salmora".

Q. Were you master of that boat in January of this year? A. I was.

Q. On the night of January 12th, what run were you making?

A. I was coming from Tacoma to Seattle.

Q. What time did you leave Tacoma?

A. About seven o'clock.

Q. What time did you pass Point Robinson on that night? A. At 7:55 p. m.

Q. Did you pass or see the steamers "Virginian" and "Strathalbyn" on the night of January 12th?

A. Yes sir, about a little over fifteen minutes run from Point Robinson I passed them.

Q. At the time you passed them, will you describe the position of the two vessels as near as you could tell?

A. I passed between the steamers. The "Strathalbyn" was lying ahead of the "Virginian", in a somewhat west of south, I believe.

Q. West of south?

A. West of south was her approximate position, and she was heading in a southeasterly direction. The "Virginian" was—I passed leaving to the starboard and she was heading in somewhat the same direction.

Q. You mean to say that the two vessels as you passed between them were approximately—

A. (Interrupting) Laying on parallel courses, possibly 200 yards apart or more.

Q. Could you tell, captain, what course by the compass the "Virginian" was lying on the time you passed her?

A. She must have been heading nearly southeast. I was heading about northwest after I changed my course.

Q. About how far from Pully Point were the two vessels? A. Something over a mile, I believe.

A. North or south? A. South.

Q. Was the "Virginian" moving at all when you passe dher? A. I don't think she was.

Q. Was the "Strathalbyn" moving at all?

A. Slightly, if I remember right.

Q. Captain, did you see any lights on either of those two vessels as you approached them?

A. Yes, I could see the "Virginian's" head and range light very bright and clear, and also saw her green light, which was plain.

Q. Those lights were on the "Virginian"?

A. On the "Virginian", yes.

Q. What lights did you see on the "Strathalbyn", if any?

A. The only light that I saw on the "Strathalbyn", or lights, was her port light, which I saw when I was approximately a quarter of a mile away from her, and

what I took for a headlight when I was possibly abreast of her foremast.

Q. This light you took to be her headlight was a white light? A. Well, yes.

Q. How far away were you from the "Strathalbyn" before you saw this white light?

A. Not over 150 yards.

Q. So that the first light you saw on the "Strathalbyn" was when you were approximately a quarter of a mile away; is that true? A. Yes.

Q. That is the first light you had seen?

A. That is the first light I saw outside of these two high white lights.

Q. Well, those lights—

A. (Interrupting) Were on the "Virginian", yes.

Q. (Continuing) —were on the "Virginian". What kind of lights were these lights on the "Strathalbyn", were they oil lights or electric lights, could you tell?

MR. HAYDEN: I object unless he knows.

MR. BOGLE: That is what I am asking him.

Q. (Mr. Lawrence Bogle) Could you tell whether they were—

A. (Interrupting) I know they were not electric lights.

Q. How do you know that?

A. Because they were not burning bright enough.

Q. What kind of lights would you say they were, captain?

A. I would say they were very very dim oil lights.

Q. How did they compare with the "Virginian's" lights? A. Very poorly.

Q. Captain, I will hand you a government chart and ask you to indicate to the best of your recollection the position of these two vessels as they were lying in the water at the time you passed between them?

A. Will I have to mark it on here?

Q. Yes.

A. (Witness marking) The "Virginian" was laying approximately in that position (marking) and the "Strathalbyn" was lying about like that.

Q. Well, just mark the "Virginian" with a "V" and the "Strathalbyn" with an "S."

A. (Witness does as requested.)

Q. They were both headed in which direction?

A. Why, in a general southeast.

Q. You might indicate with an arrow there the direction the two vessels were headed?

A. (Witness does as requested) Like that.

Q. Now, will you indicat on that chart the course that you took from Robinson Point up to and during the time, the position of your course between the two vessels?

A. The line that I have drawn there would nearly indicate my regular course, which is northwest half north to—

Q. (Interrupting) Now, wait a minute. This line which you have drawn and marked "Northwest half north"—

A. I passed closer to Point Robinson than that, though.

Q. I just want to get that approximate, as near as you can give it.

A. (Witness marks) That would be nearer my course. Now, after leaving Robinson I was steering northwest half north, but I hauled off to the starboard when I saw these high white lights.

Q. I see.

A. So that would throw me out—

Q. (Interrupting) Just indicate that on the chart, will you? A. All right.

Q. Show your course passing between the two vessels.

A. (Witness marks) Now, I hauled to starboard in order to pass this ship on the port hand.

Q. That is the "Virginian"?

A. Yes sir, the "Virginian", but I saw this about—oh, about—approximately about a quarter of a mile away I saw this red light begin to draw away from this range light—or head and range light and I knew then that it was two craft, and almost instantly after seeing the red light I saw the green light on the "Virginian". Then I changed my course to pass between them.

Q. Well, just indicate that course?

A. (Witness marks with pencil.)

Q. Just draw the position of the two vessels and

your course, the course you ran that night. Just use the ink instead of a pencil there.

A. (Witness traces pencil markings with black ink.)

MR. HAYDEN: I would like to request that the witnesses be separated.

The witnesses were here excluded from the court room.

Q. (Mr. W. H. Bogle) Mark the line you have drawn on the map indicating the course of your vessel with the letter "'X".

A. (Witness does as requested.)

Q. (Mr. Lawrence Bogle) I think you had better indicate your course there with an arrow, showing the direction you were going?

A. (Witness does as requested.)

Q. (Mr. W. H. Bogle) Now the same on this one. (Indicating.)

A. (Witness does as requested.)

Q. What time, approximately, did you pass these two vessels?

A. About 8:17, I think it was, or nearly.

MR. LAWRENCE BOGLE: I want to offer this in evidence as Respondent's exhibit "5-1".

Map referred to was marked respondent's exhibit "5-1", same being attached hereto and returned herewith.

Q. (Mr. Hayden) I didn't understand your answer to the last question. A. About 8:17.

Q. (Mr. Hayden) That is, passed these vessels?

A. Let's see now. About that time.

Q. (Mr. Lawrence Bogle) Captain, when you saw that red light, could you tell what vessel it was on when you first— A. (Interupting) No sir.

Q. Could you see anything to indicate the course of the vessel? A. No sir.

Q. You could not see her hull? A. No.

Q. Outline.

A. I could only tell that it was in proximity to these white lights that I saw.

Q. And you were then not more than a quarter of a mile away? A. About that, I think.

CROSS EXAMINATION.

Q. (Mr. Hayden) Where did you pass the "Flyer", Mr. Draper, on this night, about what point and about what position north or south of Robinson's Point?

A. I didn't quite get that question.

(Question read.)

A. I passed her shortly after I passed Robinson Point.

Q. At what time?

A. Why, about 8:05, I should say, as near as I can remember; something like that.

Q. That is according to your ship's time?

A. Yes, according to my time.

Q. And where was the "Flyer" then?

A. It was heading for Tacoma, heading south or southeast.

Q. About how far north of Robinson Point?

A. Oh, that would be between two and three miles.

Q. The "Flyer" was two or three miles north of Robinson's Point when you passed her? A. Yes.

Q. How far were the "Virginian" and the "Strathalbyn" from Robinson's Point at the time you passed the "Flyer"?

A. Let me see now. Well, they were approximately a mile, I think.

Q. (Mr. Lawrence Bogle) What is that, north of Robinson, did you say?

A. South—oh, north of Robinson.

Q. (Mr. Hayden) North of Robinson?

A. Oh, they would be possibly four miles.

Q. The "Virginian" and the "Strathalbyn" were probably four miles north of Robinson Point? A. Yes.

Q. At the time you passed the "Flyer"—is that what you mean to say?

A. I am not certain about the exact distance between Robinson and Three Tree or Pully.

Q. Well, let's get it this way: About what proportion of the distance?

A. Well, they were about two thirds.

Q. That is, the "Strathalbyn" and "Virginian" were about two thirds of the distance from Robinson's Point towards Pully Point?

A. That is as near as I can judge, yes sir.

Q. At the time you passed the "Flyer"?

A. Yes sir.

Q. Now, in approximating the distance proportionately between Robinson's Point and Pully Point, where did you pass the "Flyer"?

A. About one third of the distance.

Q. North of Robinson's Point? A. Yes.

Q. The "Flyer" was headed for Tacoma?

A. Yes sir.

Q. Where did you first see the "Virginian's" light when you were going towards Seattle?

A. When I was off Point Robinson.

Q. Before you got to the Point?

A. Oh, well, just a few seconds, yes.

Q. How close to the point do you usually navigate your vessel, or did you on this night, rather?

A. I was quite close that night.

Q. And where do you estimate the "Virginian" was when you first saw her lights?

A. Well, I knew that she was to the south of Three Tree Point or Pully.

Q. To the south of it?

A. Yes. Of course I could not tell how far.

Q. Where did the "Indianapolis" pass you?

A. Somewhere between Brown and Robinson.

Q. Did you notice the "Flyer" at the same time that you noticed the "Virginian's" lights as you were coming around Robinson? A. Yes sir.

Q. How did the "Flyer" maneuver that night?

A. When I saw her she was headed almost directly towards—I could see her—all of her running lights.

Q. Yes. Go ahead.

A. And she was somewhere in the vicinity of the "Virginian", or what I afterwards found to be the "Virginian".

Q. And then what did she do?

A. Well, then she headed toward Point Robinson—

Q. Yes, go ahead.

A. And I passed her about 8:10, something of that sort.

Q. Passed what about 8:10? A. The "Flyer".

Q. You passed the "Flyer" about 8:10, or the "Virginian" passed the "Flyer" about 8:10?

A. Let's see. No, I passed her about 8:05, I think it was.

Q. Yes.

A. I would not—

Q. (Interrupting) Well, what did the "Flyer" do from the time you saw her down at Pully Point, what maneuvers did she perform?

MR. LAWRENCE BOGLE: We object to all this testimony about the "Flyer" as being immaterial and not proper cross examination.

Q. (Mr. Hayden) Answer.

A. I could not see her perform any maneuvers; she simply was laying or running in the vicinity of the "Virginian" and headed for Point Robinson on her way to Tacoma. I knew that she was late, because it was past her time.

Q. All the time you saw the "Flyer", then, she was on her regular course from the point, between Pully Point and Robinson Point, toward Tacoma?

A. Nearly so, yes sir.

Q. You didn't see these two vessels come together, did you? A. No sir.

Q. What is the speed of your boat, what speed was she making that night?

A. She makes approximately ten miles an hour.

Q. Was she doing that that night?

A. Nearly so. Possibly not that, because we had quite a load.

Q. What would you say would be her speed that night? A. She probably was doing nine.

Q. I presume the positions you put on the map there, of these boats, are approximate? A. Yes sir.

Q. The best you recollect at this time? A. Yes sir.

Q. You don't pretend that they are accurate, do you?

A. Why, no, I could not say that they were absolutely accurate, but then they are nearly in the position that they were when I passed.

Q. And as you were coming up from Robinson's

Point toward the vessels, their stern would be toward you, would it not—or would their bow be toward you?

A. Why, the bow was toward me, the bow of the "Virginian" I am absolutely certain of because I could see her lights.

Q. The bow of the "Virginian" was towards you?

A. Yes.

Q. You don't know whether the bow of the "Strathalbyn" was towards you or not at that time, do you?

A. No sir.

Q. About what was the proportionate distance between Robinson's Point and these two vessels when you first saw the red light, what was your proportionate distance between the point and the two vessels, were you nearer Robinson's Point or were you nearer the vessels?

A. Oh, I was nearer the vessels, certainly.

Q. And about how near, that is, proportionately, how near—I am getting at the proportion, because you state you don't know the distances between the points, and I want to get as near as I can what you consider the proportionate distances?

A. Well, I say that I was possibly a quarter of a mile away.

Q. Was it raining at the time you were coming from Robinson's Point toward the vessels? A. No sir.

Q. Was there any fog? A. No sir.

Q. Did you encounter any rain between Robinson's Point and Pully Point that night? A. No.

Q. Did you notice the "Indianapolis" in the vicinity of the "Virginian" at all? A. No, I did not.

Q. When you speak of the lights as being dim, that is a relative term, isn't it?

A. Well, a light ought to be bright enough to be seen at a distance of at least two miles.

Q. And of course the position of the vessel at the time would make a difference in whether you could see the light or not? A. True.

Q. And you didn't notice whether you could see these lights two miles off or not after you first picked them up?

A. Do you mean the lights of the "Virginian"?

Q. No, the "Strathalbyn".

A. Well, no, because I only saw the light when I was approximately only a quarter of a mile away, the first time that I—

Q. (Interrupting) But after that you didn't look to see whether you could see them two miles off or not?

A. No, because—

Q. (Interrupting) Did you know that there had been a collision at the time you passed—

MR. BOGLE: (Interrupting) He didn't quite finish his answer.

Q. (Mr. Hayden) Oh, I beg your pardon.

MR. BOGLE: He said "No, because—"

Q. (Mr. Hayden) What were you going to say?

A. I said because she was not in such a position that I could see the lights after I passed her.

Q. She had swung around and was coming up towards Robinson's Point, while you were going the other way? A. Yes sir.

Q. Did you notice, at the time you passed Robinson's Point, that there had been a collision? A. No sir.

Q. Did you know, at the time you passed the vessels, that there had been a collision? A. No sir.

Q. Did you notice anything strange about these vessels at that time?

A. I noticed that they were laying still—were lying still, they were not under way.

Q. And did that create any surmises or speculations in your mind at all? A. Yes.

Q. You didn't get close enough to the vessels to see them being damaged at all, though, if they had been damaged at all? A. No, no.

Q. You didn't see any action of the men aboard the vessels that would indicate that they had been damaged at all? A. No.

Q. Or that there had been a collision? A. No.

Q. Are you the gentlemen who volunteered and telephoned to Captain Duffy that you had seen this accident or seen this situation?

MR. LAWRENCE BOGLE: We object to that.

A. No sir.

Q. (Mr. Hayden) Was somebody else with you that telephoned to Captain Duffy that you two had been

there, before you came up to give your testimony before the inspectors?

A. I don't know; I have no knowledge of it.

Q. How long have you known Captain Duffy?

MR. LAWRENCE BOGLE: It is wholly immaterial.

A. How long have I known Captain Duffy? Oh, it is possibly a couple of years that I have known him, personally.

Q. You didn't have any difficulty in avoiding the "Strathalbyn" that night? A. Oh, no.

Q. How far did you make out her hull or the load of lumber on her before you reached her, how far away were you from her when you first made it out?

A. Oh—

MR. LAWRENCE BOGLE: (Interrupting) We object to the form of the question. He has not testified he made it out at all. In fact he testified that he did not.

MR. HAYDEN: Strike out the question then.

Q. (Mr. Hayden) Did you make out the hull or the lumber on the "Strathalbyn" at any time that evening?

A. Only when I passed between the two ships, that I could discern that it was a large craft.

Q. You didn't see her when they were coming down towards you? A. No.

Q. All you saw was the red light?

A. The dim red light, that is all.

Q. As you passed the "Strathalbyn", did you see any other lights aboard of her?

A. Only a very dim headlight, or what I took to be a headlight.

Q. Yes. That was in the position where the headlight should be?

A. Where it should have been, yes sir.

Q. Did you notice any lights in her cabin?

A. No sir.

Q. Did you notice any lights in her chart room?

A. No.

Q. You didn't notice any lights in the forecastle head, I suppose?

A. If I remember rightly, there were possibly a

few gleams of light, but I can't remember what their position was; they were very dim, whatever they were; possibly somebody was walking about with a lantern, but it was obscured by—

Q. (Interrupting) But you don't remember that at this time; I say, that is speculation, is it, or do you remember anybody walking about with a lantern?

A. No, I can't say positively that there was.

Q. How long have you known Captain Duffy? I don't think you asnwered that.

MR. LAWRENCE BOGLE: You asked him that once.

MR. HAYDEN: I don't remember his answer.

MR. LAWRENCE BOGLE: About two years.

Q. (Mr. Hayden) Is that what you say?

A. I think nearly two years since we were on the "Chippewa".

Q. You were shipmates with him, were you?

A. Yes sir.

Q. How long were you shipmates with him?

A. Oh, I don't remember exactly; possibly a month, maybe less.

Q. Maybe more?

A. No, I don't think it was more than that.

Q. Now, as you were approaching the "Virginian" and the "Strathalbyn", there was movement either in the "Virginian" or the "Strathalbyn", was there not, either one or the other of the vessels, or both of them, were moving?

A. Well, the craft that carried the red light was moving; I am certain of it because it was drawing away from these high white lights.

Q. And the craft that carried the red light was to the east of the "Virginian"?

A. No sir, she was to the west.

Q. The red light was to the west of the "Virginian"? A. Yes.

Q. Put an arrow showing the way the "Strathalbyn" and the "Virginian" were heading, will you please?

A. You want one arrow to show the—

Q. (Interrupting) The way each boat was heading.

A. (Witness does as requested.)

Q. On this chart indicate the position your boat was in when you first saw the red light?

A. When I first saw the red light was possibly just about where I changed my course.

Q. A little before you changed your course?

A. Yes, it was just an instant or two.

You may make a mark there on the map, please,—before you changed your course, was it?

A. Yes. Now, this is not exact, you see, I should have—Mr. Bogle—

Q. (Mr. Lawrence Bogle) What is that?

A. In making this I should have come up here a little more on her usual course and then changed it, you see; there should be a bend in here.

Q. (Mr. Hayden) Well, make it just the way it should be, Mr. Draper.

A. You see what I was getting at when I drew this, I drew the regular course and then drew this (marking). Now, that is more near.

MR. LAWRENCE BOGLE: Better mark that "X-1" then.

MR. HAYDEN: Better scratch out this other cross, it seems to me.

THE WITNESS: That will erase.

MR. HAYDEN: I would not try to erase it, I would take my pen and draw a wavy line through it. I would not erase it. Just leave it as it is. Draw a pen line through it then so that the record will show that it is scratched out by cross lines.

A. (Witness marks ink cross lines across line referred to.) It was possibly just a minute or so before I changed the course. (Marking.) About there.

Q. (Mr. Hayden) That cross mark at the printed figures on the chart "108" is where you changed your course?

MR. LAWRENCE BOGLE: No, he is answering your question if that is where he thinks he first saw the red light.

Q. (Mr. Hayden) Where you first saw the red light; is that it? A. Yes.

Q. Why did you change the course nearer Robin-

son's Point from the point where you say you first saw the red light? A. How many minutes did—

Q. (Interrupting) No, why did you do it?

A. Why? Because I saw these lights and I was going to pass to the port of her.

Q. At that time, then, you thought there was only one vessel there; is that it? A. Yes.

Q. You intended to pass to the port? A. Yes.

Q. How long did it take you to run down, now, estimating from the time that you made up your mind you wanted to pass to port of that vessel, until you got to them—aport of the vessels until you got to them?

A. I didn't get your question clearly.

(Question read.)

A. Why, I can't understand that.

Q. All right, I will ask it over again.

Q. How long did it take you to run from the place marked "A", where you changed your course, until you got down to the "Strathalbyn" and "Virginian"?

A. Oh, that probably would be about six or seven minutes, I guess, possibly more. I can't remember the exact time, because I didn't—

Q. (Interrupting) Approximately is all I expect you to get at it. Now, show on the chart about where you passed the "Flyer"?

A. Why, the "Flyer" possibly passed me just shortly before I changed my course.

Q. Do you remember clearly about where that was, or is this an estimate? A. It would be an estimate.

Q. You remember it was before you changed your course, do you? A. Yes.

Q. All right. Now, where would that be about? As I move my pen along this way tell me where to stop and where you want it.

A. It would be pretty close to where I changed.

Q. Right about here? A. Yes.

Q. Well, make a dot there and mark it "F"; is that right? A. Yes, I guess that will be close enough.

Q. Can you remember the exact time you left Tacoma? You said, or I understood you to say, that it was about seven o'clock. Do you remember whether that is the exact time or not?

A. No, I don't right now. I have it in my log book.

Q. Have you got your log book here?

A. No, it is on the boat.

Q. And as I understand, then, at 7:55 is approximately the time you passed Robinson's Point?

A. No, it is not approximate. That is the time I passed Robinson's Point.

Q. That is right, is it?

A. That is the exact time on the log.

Q. That is what it shows on your log, is it?

A. Yes sir.

Q. Did you blow any whistles to either the "Strathalbyn" or "Virginian" to indicate the course you were taking to pass them? A. Yes sir.

Q. Did you get replies? A. No.

Q. From neither vessel?

A. No. I blew just two whistles to the "Virginian" when I changed to pass and leave her on the starboard.

Q. You blew two whistles to the "Virginian"?

A. Yes.

Q. You didn't get any reply?

A. No. It is nothing unusual.

Q. Now, when you were going between the two vessels, how far were you from the "Strathalbyn"?

A. Well, I believe 150 yards, maybe less.

Q. How much? A. Possibly 150 yards.

Q. And how far were you from the "Virginian"?

A. I don't know exactly. I know that I was closer to the "Virginian" than I was to the "Strathalbyn".

Q. And how far apart were the "Virginian" and the "Strathalbyn", estimating the best you can?

A. 200 or 250 yards. It is hard to remember just now exactly.

Q. Could you see the hull of the "Virginian" clearly as you passed between the two vessels?

A. Why, yes, I could distinguish the hull of the vessel.

Q. And could you distinguish the hull of the "Strathalbyn" clearly as you passed between them?

A. I would not say that I could distinguish the hull of either one clearly.

Q. You could distinguish the hull, though, of both of them, could you, make them out?

A. I could make it out that it was a hull, yes sir.

Q. On both vessels?

A. And I could tell the way they were heading by their rig and general appearance.

Q. Could you see the masts?

A. Of the "Virginian", yes sir.

Q. Could you see the masts of the "Strathalbyn"?

A. Not as clearly as I could the "Virginian".

Q. When did you first see the masts or outline of either of these vessels, aside from their lights?

A. Oh, when I was up to them and passing between.

Q. Didn't see either of them before you started to pass between them; is that it? A. No.

Q. You were as near to the "Strathalbyn", as you were approaching her, as you were when you were between her, were you not?

A. I don't get that clearly. I was—

Q. (Interrupting) As you were approaching you came as close to the "Strathalbyn" as you were when you were between the two vessels?

A. Oh, yes, about the same distance, I guess.

Q. Did you notice anything strange about the appearance of the headlight on the "Strathalbyn", other than its being, as you say, dim?

A. No, I can't say that I did. I tell you that I could not see anything that was like a headlight until I was right abeam of her or her foremast would be abeam of us.

Q. And her foremast was abeam of you?

A. Yes, or almost, and I—

Q. (Interrupting) Then how long after you were abeam of her did you see that light?

A. How long after? I just simply saw it, is all.

Q. How long was it in your vision?

A. Oh, just a minute or so.

Q. Well, was it a minute? Did you see it for a minute?

A. Did I see it for a minute? Possibly.

Q. Did you see it for longer than a minute?

A. I can't say that I did. I don't remember how

long I saw it. I know I saw it, just simply a light that was very very dim, hanging in her fore-rigging.

Q. And I would like to know, the best estimate you can give me, or is it the best estimate that you can give me that you saw it a minute or a minute and a half?

MR. LAWRENCE BOGLE: I object to that. He has answered it two or three times.

A. Well, I don't think I ought to be required to say how long I saw that light, because I can't remember.

Q. That is what I wanted to find out. But your impression at this time is that you saw it for a minute or minute and a half?

A. My impression at this time is that I saw a light in her fore-rigging which was very dim and I took to be her headlight.

Q. About the time, now, what is your impression about the time that you saw it, the length of time you saw it?

MR. LAWRENCE BOGLE: He has testified to that three or four times.

Q. As I understood you to say, a minute or a minute and a half or so; is that right? Is that your present impression about it?

A. Mr. Hayden, I—

Q. I only want your present impression, if you have any impression at all about it—

A. (Interrupting) I have told you I don't remember how long I saw that light.

Q. I see.

A. Or how long we were in passing it. I say I simply saw a light there.

Q. And at this time you haven't any impression of the length of time; is that what you want to say?

MR. LAWRENCE BOGLE: He has answered it. I think you had better let his answer go, rather than to ask him what he means to say.

MR. HAYDEN: I want to find out.

MR. LAWRENCE BOGLE: He says what he means to say.

Q. (Mr. Hayden) I want to know if you—

A. (Interrupting) Now, here, what you want to know is—I saw the light when her foremast would be

about even with our bow, but it only takes a minute or two for us to travel far enough so that it would be astern of us, out of my vision—if that is what you want to know?

Q. All right. Now then if there was nothing the matter with the position of that light, you should have seen it when you were directly ahead of her, shouldn't you?

A. Yes sir, if it had been a good light I should have.

Q. The light is supposed to show, as I understand—the masthead light, to show around the horizon two points abaft the beam, isn't it? A. Yes sir.

Q. On both sides? A. Yes sir.

Q. Were you paying any particular attention to this light prior to the time you got between the two vessels?

A. No more than that I was looking for other lights on the vessel aside from the red light.

Q. But at the time you saw the red light you thought there was only one vessel there?

A. I don't understand.

Q. Didn't you testify that when you saw the red light you thought there was but one vessel?

A. When I first saw the red light?

Q. Yes, and that afterwards it opened up and you saw a green light? A. Yes.

Q. And you saw the other lights drawing away from the red light?

A. It was so close with the lights of the "Virginian" that it might have been her port light.

Q. So this masthead light that you didn't see until you got between the "Virginian" and the "Strathalbyn" might have been co-mingled with the masthead lights of the "Virginian" too, you would not particularly notice it until you got between the two vessels; isn't that right?

A. No, I judge that I would not have noticed it. The light could not be seen at that distance, it was impossible.

Q. I just asked you if you didn't—while you were approaching the "Strathalbyn" as close to her as you did, when you were between the two vessels, and you answered "Yes, the distance would be the same".

A. Well, if you asked me a question like that I didn't fully understand you.

Q. Well, I want to—

A. (Interrupting) I don't see any reason for your trying to tangle me up.

Q. No, I am not, I am trying to get the straight of it. I am not trying to tangle you up at all, I am trying to get the straight of it. I want to know if it is not a fact that you didn't—

A. (Interrupting) Mr. Hayden, my course was—when I was approaching the two vessels, was about parallel with the course of the "Strathalbyn" and the nearest I was to her at any time was when I was passing between the two vessels. Of course the "Strathalbyn" to me was apparently ahead of the "Virginian", as I was not any closer than 150 yards, if I was that, and if you asked me whether I was the same distance when I was approaching her, I didn't understand it that way.

Q. When you crossed over past the bow of the "Strathalbyn" on your course you were about—

A. (Interrupting) I didn't pass the bow of the "Strathalbyn", that is, other than when she was laying parallel to my course. Any time I passed her bow I was so far away that I could not have told what she was.

Q. Are you sure that the "Virginian" was not moving at the time you went between the vessels, or is it simply your impression now that she was not?

A. If she was it was very slowly.

Q. The "Strathalbyn" then was drawing away from the "Virginian"?

A. Slightly. To me the "Strathalbyn" had a slight way on; I am not certain about it.

Q. Was the "Strathalbyn" swinging any, do you know, at that time?

A. She must have been before I arrived at the exact vicinity of the vessel.

Q. Did you see it so that you know?

A. I know that the red light was swinging away from the "Virginian's" lights.

Q. Yes—

A. And that red light—

Q. (Interrupting) But I mean could you tell from where you whether or not the "Strathalbyn" was swinging? A. I could see the red light moving, yes sir.

Q. The courses and distance that you have put the "Strathalbyn" down—her position and her apparent direction that she is taking there, how do you feel about that as being accurate or otherwise, do you feel that that would be the compass course?

A. No, it would have to be approximate course. I didn't know what course she was heading exactly, any more than I know the course I was steering, and that she would be laying about parallel to my course.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Captain, is there any particular reason why you should pay any attention to the "Flyer" and her course at the time she passed you?

A. No, sir.

Q. What side did she pass you on? A. Port side.

Q. I understand that the position of the two vessels as you have indicated them on this chart was the position of the two vessels as you passed between them; is that correct? A. Yes, sir.

Q. And not the position of the two vessels as you approached?

A. That is right. As I passed between them?

Q. As you passed between them?

A. That is all I know about their position, because then I could see.

Q. You don't know how the "Strathalbyn" was lying when you first approached them and saw the red light?

A. No, sir. I can only guess at that.

Q. Now, captain, you have stated here that the position marked "A," as I understand it, was about the position you were in when you first saw the red light of the "Strathalbyn"? A. No.

Q. That is not the position?

A. No. That was about where I changed my course to pass to the port of this steamer.

Q. That I saw ahead?

A. That I saw ahead, yes, sir.

Q. You didn't mean to testify that that is the position you were in when you saw the red light of the "Strathalbyn"?

A. No, sir, I didn't mean to testify it, if I did.

Q. Could you indicate about where you were when you first saw the red light, approximately?

MR. HAYDEN: He has already done that.

MR. LAWRENCE BOGLE: Where is it?

MR. HAYDEN: It has already been gone into.

MR. LAWRENCE BOGLE: Where is it?

MR. HAYDEN: "108."

Q. (Mr. Lawrence Bogle) Now, I was mistaken there. You have testified that at the point opposite the figure "108" on the chart was about where you were when you first saw the red light?

A. Well, yes, I guess that would be about right; that would be the approximate distance.

Q. Approximate distance. Now, captain, that is a matter of a mile or more away from the steamer "Strathalbyn." You have testified that you were not more than a quarter of a mile away when you first saw the red light. Now, which is correct, were you more than a quarter of a mile away, as it is shown on this chart, or is that just a rough estimate?

A. Well, this is a rough estimate. If you want to get down to exact figures, miles and time, we will go into that; but this is simply an approximate estimate.

Q. That is just a rough guess?

A. I have not measured that course nor measured the distance between Robinson and Pully. It is just a rough guess.

Q. Well, your testimony that you were a quarter of a mile away is nearer accurate?

A. Is nearer accurate, yes, sir.

Q. You don't know what the position of the "Strathalbyn" was at that time, do you?

A. No, sir, I don't.

Q. Were you running at full speed all the time there, captain, or did you slow up after you saw these lights?

A. I don't remember now, but I think we ran full speed.

Q. How far would you go in six or seven minutes, approximately?

MR. HAYDEN: Why, that is immaterial. He has already said he was making nine knots that night.

MR. LAWRENCE BOGLE: I am asking him how far he would go in six or seven minutes.

MR. HAYDEN: Well, calculate it.

MR. LAWRENCE BOGLE: Well, that is what I am asking him to do.

A. Well, how do you estimate that, by knots or by miles?

MR. HAYDEN: You said miles.

A. I said miles, yes.

Q. (Mr. Lawrence Bogle) What I am trying to get at is this: You have testified, as I understand you, that from the time you saw the red light until you were abeam or until you reached these vessels, it was about six or seven minutes. Now, if you were only a quarter of a mile away when you saw the red light, would it take you six or seven minutes to run that distance of a quarter of a mile?

MR. HAYDEN: I object to that as leading and I object to it as cross-examining your own witness.

MR. LAWRENCE BOGLE: I am cross-examining him on your examination.

A. No, it should not take so long as six or seven minutes to run a quarter of a mile. Did I testify that it did?

Q. I understood you so. Then from the time you saw the red light until you were up opposite these two vessels would be the time it would take you to run a quarter of a mile?

MR. HAYDEN: I object to that as elading and not proper re-direct examination.

Q. (Mr. Lawrence Bogle) What is your answer?

A. That is right.

Q. What lights were you carrying that night, captain, what kind of lights?

MR. HAYDEN: I object as immaterial.

Q. (Mr. Lawrence Bogle) Oil or electric?

A. Oil lights.

Q. How did the lights on the "Strathalbyn" compare with your lights?

MR. HAYDEN: I object to that as immaterial.

Q. (Mr. Lawrence Bogle) Just go ahead and answer. How did they compare with your lights?

A. Why, they compared very poorly.

Q. What do you mean—very much dimmer?

A. Yes, sir.

MR. HAYDEN: I want to move also to strike out all this testimony about the appearance of these lights, on the ground that it all was after the accident a considerable time and is immaterial.

Q. (Mr. Lawrence Bogle) Captain, after first picking up what you took to be the masthead light of the "Strathalbyn" and you knew that she was not in your course, did you pay any particular attention to it after that—after once seeing it? A. No, sir.

Q. Mr. Hawden has asked you about the requirements as to the masthead lights, as to how far around the horizon they should show. What distance should that light be visible—a masthead light?

MR. HAYDEN: I object to that. The law fixes that matter.

MR. LAWRENCE BOGLE: You went into that.

MR. HAYDEN: All right, go ahead. I have my objection.

A. It ought to be visible a distance of two miles, I think.

Q. (Mr. Lawrence Bogle) The masthead light, I am speaking of.

MR. HAYDEN: I object as cross-examining your own witness, and not proper re-direct.

Q. (Mr. Lawrence Bogle) Is that your answer as to the masthead light? A. Yes.

Q. Captain, all of the distances and the times that you have given here are all approximate, to the best of your recollection after a period of six or seven months, is that true?

MR. HAYDEN: That is objected to as having been all gone into on direct and cross-examination.

A. Why, yes, they are approximate.

RE-CROSS-EXAMINATION.

Q. (Mr. Hayden) Captain, I understood you to say that the course that your vessel was taking and the course that the "Strathalbyn" was taking were parallel courses; is that right? A. Well, nearly so.

Q. Well now, this looks to be considerably away

from a parallel course; have you got her twisted around there too much?

A. I don't know. I said her course was nearly parallel with the course that I was taking—both of them; they might have been ahead a little bit, either one way or the other. The "Strathalbyn" apparently was headed more to the west of south.

Q. It just occurred to me when you said that it was nearly parallel courses that this is very far off from a parallel course, and I was wondering if you wanted to change the line of that drawing at all.

A. Well, if you want to go into that we will take the parallel rules and take the regular magnetic course and get it nearer.

Q. Well, I prefer to be as near accurate as we can get it. I think you had better do that, Mr. Draper, and get it accurate; if we are going to have it in the record at all, it had better be as accurate as you can get it, if you want to make any change there. Are you certain that she was headed inside of Robinson Point that night?

A. Yes. That is only an approximate distance, I can't get it accurately and you would not expect me to.

Q. Mr. Draper, this was a dark, clear night, was it not?

A. It was a dark night; it was clear atmosphere.

Q. Clear atmosphere? A. Yes.

Q. And the distances that you have given and estimated are taking that into consideration? A. Yes, sir.

Q. So that in that kind of a night it is a difficult thing to estimate distances accurately on the water, is it not?

A. Why, certainly it is. The only way you can judge is by the time that you run.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) As you were approaching these vessels, were you looking for a masthead light or something to indicate the position of this other vessel?

MR. HAYDEN: I object to that—when he said he was approaching them they were together—I object on the ground it is cross-examining your own witness.

A. Yes, I was looking for a masthead light on this other craft with the red light.

Q. (Mr. Lawrence Bogle) Why was it that you could not see them until you were within 150 yards?

MR. HAYDEN: Same objection.

A. Well, either it was obscured or else it was not burning bright enough.

Q. (Mr. Lawrence Bogle) If it had been a very bright light, properly set and burning, you would have seen it at a much greater distance, would you not?

MR. HAYDEN: I object to that on the same ground.

A. I would, yes, sir.

MR. HAYDEN: And the same motion applies, to strike it all out, as having been an occurrence that happened after the accident, and incompetent and immaterial.

(Witness excused.)

JOHN C. McDOWELL, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) What is your business, captain? A. Captain, master.

Q. You hold a master's license? A. Yes, sir.

Q. Have you a pilot's license? A. I had that first.

Q. For what waters?

A. Between Port Townsend and Olympia.

Q. How long have you held this license?

A. About twelve years.

Q. How long have you been a master?

A. About ten years.

Q. How long have you been following this business, captain, of seafaring? A. Fifteen years.

Q. What vessel are you on at the present time?

A. Steamer "Daring."

Q. What size vessel is the "Daring"?

A. She is 163 tons.

Q. What is her run, captain?

A. Between here and Tacoma, and way ports.

Q. Were you on the steamer "Daring" on the night of January 12th of this year—1912?

A. I can't swear to the date, no.

Q. How long have you been master of the "Daring"?

A. I can't tell you exactly that, either.

Q. Well, how many months or years?

A. About two years and a half.

Q. Captain, on the night of January 12th did you pass the steamship "Strathalbyn" coming out of the harbor of Tacoma? A. Yes, sir.

Q. Were you on duty at the time she was first reported? A. No, sir, I was off watch.

Q. Where were you?

A. I was in my room on the port side.

Q. What was the first intimation you had that you were approaching another steamer?

A. Well, I heard two whistles blown and my mate didn't answer.

Q. Where were you when you heard these two whistles, where was your steamer? A. Where was I?

Q. Where was the "Daring" at the time you heard these two whistles?

MR. HAYDEN: I object to this as immaterial and incompetent. I understand this is going into Tacoma harbor.

MR. LAWRENCE BOGLE: That is what I want to find out.

MR. HAYDEN: That is what he said.

MR. LAWRENCE BOGLE: Well, I am asking him myself.

MR. HAYDEN: He just answered it.

MR. LAWRENCE BOGLE: Well, I didn't hear him answer. That is all right.

Q. (Mr. Lawrence Bogle) Did you say you were going into Tacoma Harbor? A. Yes, sir.

Q. All right. What did you do then, captain, when you heard some vessel blowing to you?

MR. HAYDEN: Let my objection run to the whole of this as immaterial and incompetent.

MR. LAWRENCE BOGLE: It may run to all of this, if you want it to.

MR. HAYDEN: Well.

Q. (Mr. Lawrence Bogle) What did you do at the time you heard this steamer whistle?

A. When my boat did not answer back, I came out to see why he didn't, and I asked him what that was that whistled and he said he could not see what it was.

MR. HAYDEN: Now, I object to that as hearsay, and move to strike it out.

Q. (Mr. Lawrence Bogle) Just tell what you know about it, captain. What orders, if any, did you give at that time?

MR. HAYDEN: I object to that as immaterial and irrelevant.

Q. (Mr. Lawrence Bogle) Go ahead and answer.

A. Well, I told him—I saw this little white light moving along against the background over in Tacoma there and I told him he had better put his wheel over and go behind her and give her two whistles—to answer the whistle; that he could not see the side light.

Q. (Mr. Lawrence Bogle) Did he do that?

A. He did.

Q. What else did you see at this time of this vessel?

A. I just noticed one little white light.

Q. Where was that white light?

A. It was hanging over the bow.

Q. Could you make out this other vessel which was coming out of the harbor?

MR. HAYDEN: I object to that as immaterial, incompetent and irrelevant.

Q. (Mr. Lawrence Bogle) I say, could you make out this other vessel?

A. Well, just a dark object was all, moving along.

Q. You knew that something was there?

A. Yes.

Q. Could you see her masthead light?

MR. HAYDEN: I object as immaterial.

A. I never noticed.

Q. (Mr. Lawrence Bogle) What lights did you see, if any, captain?

A. Just that one little light, was all I noticed in particular, because I was looking for her side lights.

Q. Did you afterwards see her side light?

A. I did when we got almost abeam, yes.

Q. And about how far away?

MR. HAYDEN: The same objection as to all of this.

Q. Go ahead and answer.

A. About how far away?

Q. Yes, when you saw her side light?

A. Oh, we could not have been more than about 500 feet or so.

Q. And what was the color of this light?

A. The starboard light, the green one.

MR. HAYDEN: I move to strike it out as immaterial.

Q. What kind of a light was it, captain, was it bright or otherwise?

MR. HAYDEN: Same objection.

Q. (Continuing) —The light on this other steamer?

A. Well, it was not a very bright light, no.

Q. Could you tell whether it was an oil or an electric light?

A. I could not, but it was a very poor light for a big steamer like that.

Q. About how many points was this other steamer off of your bow—it would be off of your starboard bow, wouldn't it?

A. Well, she crossed our starboard bow or she went to port—or to starboard of us, you know, but I could not tell you exactly; it has been so long ago that I don't know.

Q. What was the bearing of this starboard—

MR. HAYDEN: (Interrupting)I want it understood, clearly, that my objection is running to all of this; is that right?

MR. LAWRENCE BOGLE: Certainly.

MR. HAYDEN: All right.

Q. (Mr. Lawrence Bogle) What was the bearing of this starboard light when you first saw it, captain?

A. Well, it was almost abeam.

Q. Almost abeam before you saw it? A. Yes sir.

Q. Captain, I wish you would indicate on this chart which is in evidence as respondent's exhibit "5-1," the course of this steamer which was coming out of Tacoma

harbor, which you now know to be the steamer "Strathalbyn"—

MR. HAYDEN: (Interrupting) I object to that and move to strike it out—counsel testifying.

Q. (Continuing) —and the course of your vessel, showing about the position of the two vessels when you first came on deck, the change in your course, the position of the two vessels when you first saw the starboard light on this other vessel?

A. That is pretty hard for me to say.

Q. You can indicate your position on here and what changes you made, can't you?

A. Yes; our course was south southeast from here in, but my compass has never been adjusted, you know; that is the course I always steer from Brown's Point in after I turn the Point; see? (Indicating.)

Q. About what time was this, captain?

A. It has been so long ago that I have forgotten.

Q. What time were you due in Tacoma? A. 6:30.

MR. HAYDEN: I object as immaterial.

Q. (Mr. Lawrence Bogle) Six what?

A. 6:30 we were due in.

Q. At night?

A. Oh, that must have been—well, that was pretty near 6:30 o'clock when I passed in, because the "Indianapolis" was behind me.

Q. (Mr. Hayden) I didn't hear what you said.

A. I said it must have been about 6:30 when I passed in, because the "Indianapolis" was behind me.

Q. (Mr. Lawrence Bogle) Captain, don't you think you could indicate on this chart your course and the bearing of this other vessel from you?

MR. HAYDEN: I object as immaterial.

A. That would be just about mine. (Indicating with rule.)

Q. (Mr. Lawrence Bogle) Just draw a line.

A. Draw a line on it?

Q. Yes.

A. (Witness does as requested, with pencil.)

Q. Now, I wish you would indicate on that course just about where your vessel was when you came on deck?

MR. HAYDEN: I object to it is as immaterial.

A. (Witness indicating) Right about in there.

Q. (Mr. Lawrence Bogle) About where was the vessel carrying this white light over her bow when you came on deck?

A. It was right over the forecastle head.

Q. No, I mean about where with reference to your vessel, taking her bearing from your vessel, about where was she and what course was she on, as near as you can tell?

A. She laid right in here, as near as I could judge.

Q. Just draw a little figure there to show your vessel and the way you were headed?

A. I have already got my course on there, you know; I was coming in here.

Q. What course was this other vessel on, as near as you can tell?

A. Well, that is hard to say. She was coming off about this way.

Q. Just draw a line there.

MR. HAYDEN: That is all objected to as immaterial.

A. (Witness does as requested).

MR. LAWRENCE BOGLE: Will you object if I run a pen over that?

MR. HAYDEN: No, I don't object to that; anything that helps the thing along.

MR. LAWRENCE BOGLE: That is all I am trying to do.

(Mr. Lawrence Bogle retraced the marks with pen and ink.)

THE WITNESS: That is about right, a little more over this way. I think he was coming over this way.

Q. (Marking) Is that right?

A. Yes, about right.

Q. Now, I will mark this line here "DD" with an arrow; that is the course of your vessel, was it, approximately? A. Just about that.

Q. I will mark this other line with an arrow indicating the direction "SS"; that would indicate the position or course of the other vessel, approximately. Now, I wish you would indicate on those two courses about

where this other vessel was at the time you came on deck and about where you were?

A. Well, she was almost dead ahead then.

Q. Well, just put on the line, just put "D-1" where you were and "S-1" where she was.

MR. HAYDEN: This is just approximate, isn't it?

MR. LAWRENCE BOGLE: Yes.

A. (Marking) Put "S" over here?

Q. (Mr. Lawrence Bogle) Yes.

A. (Witness marks.)

Q. I will just put "1" on that. Now, the "D-1" is the position of your vessel when you came on deck; "S-1" is the position of the other vessel? A. Yes.

Q. At that time what lights could you see, if any?

MR. HAYDEN: Objected to. The same objection runs to all this.

A. The little white light was all that I noticed.

Q. (Mr. Lawrence Bogle) Hanging over her bow?

A. Yes sir.

Q. Afterwards did you change your course any?

A. Yes sir.

MR. HAYDEN: That is objected to also as immaterial.

Q. (Mr. Lawrence Bogle) Just show what change you made in your course?

A. We just had to change very little. You see he was crossing my bow right in here when he whistled and I was about—

Q. (Interrupting) Just show here. About like that?

A. Not quite that much. We didn't have to go more than about a half a point or a point out of our way. I changed just as soon as I came out and seen it.

Q. Then "x" to "X" represents the change in your course that you made at the time of answering her whistle? A. Yes.

Q. Now, captain, what was the position of the two vessels when you first saw this starboard light on the other vessel?

A. We were almost abeam.

Q. She was on the same course?

A. Well, she was on the same course that she had been when I first seen her; she never changed her course.

Q. And you were on the course marked "XX"?

A. Yes sir.

Q. And you were almost abeam?

A. Almost abeam when I saw her light, yes.

Q. How did that starboard light compare with the lantern which she had over her bow?

MR. HAYDEN: I object to it as immaterial.

A. It was dim compared with the lantern she had over the bow or the light she had over the bow.

Q. This light she had over her bow was a brighter light?

A. Was a brighter light, yes. It was a white light and the other one was green.

Q. Captain, could you tell as to approximately what sized vessel this vessel carrying the green light was?

A. Approximately I should judge—somewheres around 400 feet, as near as I could see in the dark.

Q. She was a large vessel? A. Yes.

Q. Could you see how she was loaded?

A. Well, I could not see until we got real close and then I seen she had the deck load on. I didn't know what it was yet.

Q. A deckload of what?

A. I don't know. I could not see it. It was too dark.

Q. Of course this other vessel was between you and the lights of Tacoma? A. Yes.

Q. As I understood, you did not see the masthead light at all? A. I never looked for it.

(No cross examination. Witness excused.)

A. L. MacMILLAN, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name?

A. A. L. MacMillan.

Q. What is your business, Mr. MacMillan?

A. Why, I have always followed steamboating myself.

Q. How long have you been in that business?

A. Since three years ago last August.

Q. What boat are you on now?

A. The "Daring" just now.

Q. What is the run of the steamer "Daring"?

A. Between Seattle and Tacoma and by way of Vashon Island.

Q. How long have you been on this steamer?

A. Since a year ago last May. No, I won't say all the time that, because I have been on other boats, but I was on it most of the time.

Q. Were you on this steamer on the night of January 12, 1912—of this year? A. Yes sir.

Q. What time did you arrive in Tacoma on that night?

A. I should judge about 6:45 or something like that; I would not say for sure.

Q. Did you pass the steamer "Strathalbyn" on that night, the night of January 12th?

MR. HAYDEN: We object to it as leading and suggestive, not the proper way to examine the witness.

A. Yes sir, if that was the night of the accident.

Q. (Mr. Lawrence Bogle) That was the night of the collision between the "Strathalbyn" and the "Virginian"? A. We passed her all right.

Q. You heard about the collision afterwards, did you? A. Yes sir, the next morning.

Q. The next morning? A. Yes sir.

Q. Where did you pass the steamer "Strathalbyn" that night?

MR. HAYDEN: This is all immaterial and objected to as immaterial, incompetent and irrelevant.

A. This was about—

MR. HAYDEN: (Interrupting) Same objection.

A. (Continuing) —eight or nine hundred feet over the other side of the lighthouse.

Q. The lighthouse where? A. On Brown's Point.

MR. HAYDEN: Just let the record show that Mr. Bogle consents to my objection running to this testimony as incompetent, irrelevant and immaterial.

MR. BOGLE: That is, that he objects and that it runs to all of this.

Q. (Mr. Lawrence Bogle) What position did you hold on the steamer "Daring"?

MR. HAYDEN: What did you say about it not running to it all?

MR. LAWRENCE BOGLE: I say you object to this and it runs to all of this examination, if that is what you mean.

MR. HAYDEN: Yes.

A. Why, deck hand or whatever you want to call it, and after dark I was supposed to be on lookout, and in foggy weather.

Q. (Mr. Lawrence Bogle) Were you on lookout at the time of passing Brown's Point? A. Yes.

Q. What first attracted your attention to the "Strathalbyn"?

A. Why, just her shape in front of these lights of Tacoma, is all.

Q. Had you ever seen her before?

A. Not to speak of. I don't think I did, no. Of course I might have seen her. I won't say for sure I didn't see her.

Q. About what time was it you first saw her?

A. Oh, about 6:35, I should think; I would not know, I don't know sure.

Q. About what was her position, at the time you first saw her with reference to your position?

A. Well, I am not very good on describing angles, but she was coming about like this and we were coming like that. (Witness illustrating).

Q. Did you report her? A. Yes sir.

Q. What did you report? A. Report?

Q. What did you report, as lookout?

A. Well, I reported there was a vessel coming out there with no lights that I could see at that time.

Q. I call your attention to chart, respondent's exhibit "5-1", and ask you if you were approximately in the position marked "D-1" here at the time you first saw the steamer coming out?

A. Where are we, supposedly?

MR. HAYDEN: Let him tell where he is supposed to be.

A. Well, about—we were in about in here somewhere; I would not say just where we were, I don't remember.

Q. (Mr. Lawrence Bogle) Were you running on a course approximately as indicated here?

MR. HAYDEN: I object to it as leading.

A. From here to here?

Q. Yes. A. What is this here?

Q. I ask you—

A. (Interrupting) Is this the N. P. Dock here?

Q. I don't know.

A. Well, if you want to know what course we were on, we were running on the regular course from there to the N. P. Dock.

Q. Now, this vessel, when you first saw her, was she running parallel to you or crossing your course?

A. She was crossing our course. As I said, she was like this and we were coming like that. (Witness illustrating).

Q. And about how far away? A. When?

Q. When you first saw her?

A. Oh, not more than a quarter of a mile, I should judge.

Q. Did you see any lights on her then? A. When?

Q. When you first saw her? A. No sir.

Q. You could just make out the loom of her hull?

A. Yes sir. I afterwards observed the steam from this winch—not observed it exactly, but then I heard the winch running, and then I could see the steam after she got close enough, a lantern over the end of her.

Q. A lantern over the end of her?

A. Over the forecastle head or whatever you want to call it.

Q. Where was this lantern hanging, over the side?

A. Yes sir, hanging over the side.

Q. When did you first see her masthead light, if at all?

A. Well, when I seen that it was about after we got almost abeam, I should judge; the steam from this winch—the steam from the winch obscured the head-

light, you see, so that I could not see it until we got almost abeam.

Q. When did you first see her side lights, if at all?

A. When we got abeam of her or a little more or a little abaft the beam, I would not say for sure.

Q. What was the color of that light?

A. It was a starboard light—green light.

Q. What kind of a light was it, was it bright or dim?

A. Dim light for an oil light or any other kind of a light, for that matter.

Q. Did you have to change your course at all to pass her? A. Yes sir.

Q. How did the masthead light look to you, was it a bright or a dim light?

A. Dim light, it was a very dim light, like the rest of the lights they had on her.

Q. How did the masthead light and the starboard light compare as to brightness, with the lantern which was hanging over her bow?

A. The lantern was all right, I could see that all right after we got over there?

Q. Was that a brighter light than the other lights?

A. Yes sir.

Q. You say that you heard about this collision the next morning? A. Yes.

Q. The next morning after passing this steamer coming out of Tacoma?

A. Well, I heard it in the next morning, or I heard it a whole lot around most every place; I don't know just where I heard it first.

CROSS EXAMINATION.

Q. (Mr. Hayden) You said you heard about the collision a whole lot?

A. Oh, quite a bit, yet—along the run—in Seattle.

Q. Who first talked to you about it in connection with the owners of the "Virginian"?

MR. LAWRENCE BOGLE: Objected to as immaterial.

A. Why, I don't know his name at all myself.

Q. (Mr. Hayden) When was it he first talked to you? A. Oh, the other day.

Q. Was that the first time he had any talk with you at all? A. Yes.

Q. How long ago?

A. Why, that was day before yesterday I think.

Q. Did you make a written statement to anybody?

MR. LAWRENCE BOGLE: I object to this as immaterial.

A. A written statement how?

Q. About what you have just been testifying to, to anybody.

A. What do you mean a written statement?

Q. Somebody write out something for you to sign?

A. No sir.

Q. Did you sign anything?

A. I didn't sign nothing.

Q. Didn't sign anything? A. No.

Q. When you were going in this night, you didn't know what vessels you were passing, did you? A. No.

Q. Didn't have any trouble avoiding her, did you?

A. Yes sir.

Q. Oh, you had some trouble avoiding her?

A. Yes.

Q. I thought you said you could see clearly her lantern that she had over her bow?

A. That lantern has nothing to do with navigating the vessel.

Q. But you could see it, couldn't you?

A. Oh, yes, I could see it.

Q. You knew there was a vessel there, didn't you?

A. I knew there was a vessel, but then I didn't know which way she was going, though.

Q. Didn't she whistle two whistles to you?

A. Yes.

Q. You knew then, didn't you? A. No.

Q. Didn't know then? A. No.

Q. Don't know what two whistles means?

A. Certainly.

Q. When you get two whistles can't you tell which way a vessel is going?

A. Well, yes, when she has her side lights and the range lights and masthead lights, you can tell which

way they are going, but if they have got only a lantern over the bow, you don't know—

Q. (Interrupting) You know which side she is going to pass you on, don't you? A. When?

Q. When you hear her whistles?

A. Oh, when I see—

Q. (Interrupting) When you hear her whistle?

A. When I see her side lights, yes.

Q. When you hear two whistles you know she is going on the starboard side of you, don't you?

A. If I can see her side lights.

Q. You don't know, otherwise? A. No.

Q. Two whistles don't mean anything, then, to you?

A. Two whistles mean on the starboard side, if you can see her side lights in the night, but if you don't see her side lights at night you are not supposed to answer them until you see them.

Q. Is that so? A. Yes sir.

Q. Who told you that?

MR. LAWRENCE BOGLE: I object to that—

A. I learned that.

MR. LAWRENCE BOGLE: That is international rules. He is stating it correctly.

THE WITNESS: Anybody that don't know that much, they don't know much.

Q. (Mr. Hayden) All right. What are you supposed to do when you hear two whistles—

MR. LAWRENCE BOGLE: (Interrupting) We object to that as immaterial.

Q. (Continuing) —when you do not see the lights?

MR. LAWRENCE BOGLE: We object to that as immaterial. He has not qualified as an expert.

A. I am no navigator myself yet.

Q. (Mr. Hayden) Then you don't know; is that what you mean?

A. Well, I suppose I know all right, but then I am not supposed to know.

Q. What do you suppose you know?

MR. LAWRENCE BOGLE: We object to that as immaterial.

A. I suppose I know just about as much as any of the rest of the lookouts on the Sound, maybe.

Q. (Mr. Hayden) What are you supposed to do when you hear two whistles and you do not see any side lights?

MR. LAWRENCE BOGLE: My objection runs to all this. I did not put him on here as an expert. He has not qualified as an expert.

Q. (Mr. Hayden) What are you supposed to do, according to your notion of it?

A. Well, if I was captain of a vessel, was on watch, and I heard two whistles and I didn't know where they came from, it seems to me I would stop my engines and reverse, if necessary, until I found out where them two whistles came from that was ahead of me.

Q. That is all you would do?

A. I would look in the night glass and see if I could see anything.

Q. Would you do anything else?

A. Well, I might shift my wheel; I would do that, yes.

Q. Anything else?

A. Oh, I don't know of anything else. I am not supposed to be a navigator.

Q. When you say you saw this green light abeam, you mean abeam of your ship? A. Yes sir.

Q. That don't mean you were abeam of the other ship? A. Abeam of us.

RE-DIRECT EXAMINATION

Q. (Mr. Lawrence Bogle) When the other ship was abeam of you, about what would your position be with reference to the other ship?

A. When the other ship was abeam of us?

Q. Yes. You testified that what you meant was that when you were abeam of the other ship.

A. When we were abeam of her, I could see her light, yes.

Q. Were you—

A. (Interrupting) Or she was abeam of us, I would not think it would make an awful lot of difference; it might.

Q. How was her bow with reference to your bow at the time you saw this light? A. How do you mean?

Q. Was your bow past her bow?

A. No, I don't think it was.

Q. You were off to her starboard? A. Yes.

Q. What I was trying to get at was what you meant by when this other vessel was abeam?

A. When she was abeam of us, or after seeing the light?

Q. Yes, was that light directly opposite your beam when you saw it?

A. Well, I should judge it was, yes.

Q. If you heard another vessel giving two whistles to you, that would indicate that she had seen you, wouldn't it? A. Yes sir.

RECROSS EXAMINATION.

Q. (Mr. Hayden) Just a minute. You say the steam obscured—the steam that you were talking about was steam coming from the winch on the forecastle head? A. Yes.

Q. And that obscured the headlight? A. Yes sir.

Q. There was a good deal of steam around there, wasn't there?

A. I expect there was. The winch was making a dickens of a noise up there.

Q. The wind was blowing from the southwest, wasn't it?

A. I don't know for sure which way it was blowing.

Q. Blowing from a southerly direction; do you know about that? A. I think it was, yes.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Could you tell what they were doing on the forecastle head with this winch?

A. As near as I could find—as near as I could say, they were heaving the anchor.

Q. Heaving the anchor?

A. That is what I thought they were doing, anyway.

MR. LAWRENCE BOGLE: That is all.

THE WITNESS: If they didn't have the light over the bow I might not have known what they were doing.

(Witness excused.)

ELMER E. STONE, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary, to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) Just state your full name? A. Elmer E. Stone.

Q. What is your business? A. Marine engineer.

Q. How long have you been a marine engineer?

A. About two years.

Q. How old are you? A. Twenty-four this month.

Q. What vessel are you working on at this time, if any?

A. Chief engineer of the steamer "Daring."

Q. How long have you been on the "Daring"?

A. Three years; been on her practically since she was launched.

Q. Were you on the steamer "Daring" on the night of January 12th, this year? A. Yes sir.

Q. What run was she on at that time?

A. She was on the East Side mail run, between Seattle and Tacoma.

Q. What time did she arrive in Tacoma on that night?

A. Well, I could not tell exactly. Approximately 6:30.

Q. Do you remember, Mr. Stone, of passing a large vessel bound out of the harbor of Tacoma as you were going in? A. Yes sir.

Q. What time did you pass this vessel?

A. Well, I could not give the exact time; somewhere between six and seven o'clock in the evening, probably about 6:30.

Q. Where were you at the time you saw her?

A. We just rounded Brown's Point, heading for Tacoma.

Q. Where were you standing, I mean?

A. I was in the window on the starboard side, on the main deck, about amidships.

Q. What did you see of this other vessel?

MR. HAYDEN: This is all objected to as imma-

terial, incompetent and irrelevant. The same runs to the whole testimony of this kind. Do you consent to it?

MR. LAWRENCE BOGLE: All right, if you want it to.

A. Do you mean what attracted my attention to the boat first?

Q. Yes.

A. Well, I heard—we blew two whistles, starboard whistle, and I went to the window, out of curiosity.

Q. (Mr. Hayden) You blew two whistles?

A. Well, our steamer.

Q. (Mr. Hayden) Yes. Well, I meant that, of course. A. Yes.

Q. (Mr. Lawrence Bogle) You went to the window and looked out?

A. And I saw a large boat passing, crossing our bows it were.

Q. How could you make her out, did you see any lights on her?

A. Well, the only light I could see was evidently on the forecastle head or hanging over the side, and they were running the anchor winch, heaving the anchor.

Q. What kind of a light was that?

A. A white lantern. Apparently just holding it over to see when the anchor came up.

Q. Was this vessel between you and the lights of Tacoma? A. Yes.

Q. Could you make out the hull of the vessel, the loom of the ship? A. Yes sir.

Q. About how large a ship would you say she was?

A. Oh, five or six thousand tons.

Q. Did she appear to be a Sound steamer?

A. No, an ocean-going steamer.

Q. Of course you were not close enough to make out her name? A. No sir.

Q. What other lights did you see aboard this steamer, if any?

A. Well, I looked in particular for a side light, which I could not see when I first noticed her.

Q. Did you afterwards see a side light on her?

A. When she was almost abeam of us.

Q. What kind of a light was that?

A. Green light.

Q. Was it a bright or a dim light?

A. Well, no, not very bright.

Q. How did it compare with the lantern which was hanging over her bow?

MR. HAYDEN: I object to that as immaterial.

A. Well, the lantern was very much brighter.

Q. (Mr. Lawrence Bogle) Did you see a masthead light at all on this steamer?

A. I don't remember looking for a masthead light.

Q. Well, I ask you if you saw one?

A. Well, I could not say.

Q. Did you hear of a collision between the steamer "Strathalbyn" and the steamer "Virginian" on the morning after you saw this steamer going out of the harbor of Tacoma?

MR. HAYDEN: I object as immaterial.

A. Yes sir.

Q. You are sure you heard that the next morning after seeing this steamer going out?

A. I heard it on the dock and also saw it in the Morning Ledger there—an account of it.

Q. Do you know whether you had changed your course in passing this steamer?

A. Yes sir.

Q. What change in course did you make?

A. Well, we swung to the left to get away from her, let him pass across our bow.

Q. What was the bearing of this green light when you first saw it, that is, where was the steamer "Daring" with reference to this other steamer when you saw this starboard light?

A. Directly opposite the other steamer going—

Q. (Interrupting) Almost abeam?

A. Almost abeam.

Q. And about how far away?

A. Well, I should say three or four hundred feet.

Q. What was the appearance of this steamer, was she loaded or light?

A. She apparently had a large deck-load; was pretty low in the water.

Q. Could you see what the deckload was?

A. Well, it appeared to be lumber.

Q. And could you make out her hull, whether she had a light or a dark hull?

A. It was evidently a black hull; it was not light.

Q. Could you make out the rig of the steamer at all? A. Well, could see the stack.

Q. Single stack?

A. Single stack, and the masts, and see she was a steamer.

Q. How many masts did she have—two masts?

A. Two, I believe.

Q. About how long would you say she was?

A. Well, hat is pretty hard to say at night. Possibly 350 feet.

Q. Could you tell whether she was a foreign vessel, that is, an ocean-going vessel, or a Sound steamer?

A. Well, she had no range light, which the Sound steamers are supposed to carry.

Q. Did you see the steamer "Indianapolis" on this night?

A. Well, I probably did, but I don't remember anything particular about her. If I remember correctly, we got to Tacoma ahead of her.

CROSS EXAMINATION.

Q. (Mr. Hayden) In the changing of the course, Mr. Stone, do you have anything to do with that?

A. No sir.

Q. How did you tell she was changing her course?

A. Well, I can tell from lights ahead of us, or looking astern.

Q. You remember that now, do you?

A. Yes, sir.

Q. That she changed at that time. You remember she changed at that time? A. Yes sir.

Q. You say this green light was not very bright. It was an oil light, wasn't it? A. Well, apparently so.

Q. And you saw it when you got about abeam of her? A. Yes sir.

Q. And you didn't see it before you got abeam of her? A. No sir.

Q. Have you got any idea why you did not see it before you got abeam of her? A. None whatever.

Q. None whatever. The way it was burning there, you would have seen it, though—ought to have seen it, unless there was something obstructing it, shouldn't you, before you got abeam of it? A. Yes, at that distance.

Q. This man, Mr. MacMillan, he was a shipmate of yours at the time? A. Yes sir.

Q. He testifies that there was a good deal of steam coming out of the winches; did you notice that?

A. Yes sir, exhaust from the anchor winch.

Q. And the wind was blowing from the south, wasn't it—southerly direction?

A. Well, now, I believe so. I would not care to make a statement to that effect.

Q. And you were on the northeastern side of the vessel? A. Yes sir.

Q. Mr. MacMillan testified that he did not see the masthead light, because the steam coming from the winch was—

MR. LAWRENCE BOGLE: (Interrupting) We object to what Mr. MacMillan testified to.

MR. HAYDEN: You can strike out Mr. MacMillan's testimony then, if you want to.

MR. LAWRENCE BOGLE: I object to your quoting it to this witness. He is competent to testify for himself.

Q. (Continuing) —so that he did not see the headlight. Now, you say you did not look for the headlight—the masthead light?

A. No sir, not in particular.

Q. So you don't know whether it was burning or not? (No response.)

Q. And your duties were principally down in the engine room at that time, were they? A. Yes sir.

Q. And you merely came out because you heard the two whistles from your vessel blowing?

A. Well, I was on deck and I turned to the window to look out.

Q. You were on deck? A. Yes sir.

Q. And you turned to the window. I don't quite catch that, how do you mean?

A. Well, just as if I stood here and walked to that window and looked out. I was not down in the hole.

Q. You were in your engine room, weren't you?

A. Yes. We handle the engine from above, on the main deck.

Q. Right on the main deck?

A. Yes, just have a grating out over the hole.

Q. But the engine is housed in? A. Yes sir.

Q. You handle it inside of a house. A. Yes.

Q. So that you have to look out of a window. The window was on the starboard side? A. Yes sir.

Q. Were you about opposite this vessel that you speak about when you looked out of the window?

A. No sir.

Q. You were ahead of her?

A. Well, she was head of us.

Q. Well, either way. The night was a dark night, wasn't it? A. Yes, sir.

Q. It was a clear atmosphere, though?

A. There were no fog or haze.

Q. You don't know that this vessel that you saw was the "Strathalbyn"—did not know it that night, did you? A. No, I could not see her name.

Q. Didn't know it was her when you passed?

A. No sir.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Mr. Stone, did you pass any other large vessel, did you see any other large vessel going out of the harbor of Tacoma that night when you were going in? A. No sir.

Q. How did this light appear, did it open gradually or how did it appear to you when you first saw it—the starboard light?

A. It appeared as if there were some obstruction in front of it, and it showed up gradually.

Q. Was the steam on the forecastle head—would it have been possible for that to have obstructed the starboard light, was it blowing back aft?

A. I hardly think so.

Q. Do you know the direction of the wind that night?

A. No, I don't remember. However, I remember that

the steam from his winch was following along with the boat as if there were a fair wind or no wind at all.

(Witness excused.)

A. L. MacMILLAN, being recalled for further REDIRECT EXAMINATION, testified as follows:

Q. (Mr. Lawrence Bogle) When did you go on the lookout the night of January 12th, Mr. MacMillian, the night before this collision happened?

A. Well, I don't remember just the time. Just at sun down or a little after.

Q. Would that be before you reached Brown's Point? A. Yes sir.

Q. Before you reached Dash Point? A. Yes.

Q. Would it be before six o'clock?

A. Well, I don't know. I tell you I don't remember just when it was. Sometimes the sun is down a little later.

Q. January we are speaking of now, January 12th.

MR. HAYDEN: He says he don't remember.

Q. (Mr. Lawrence Bogle) Did you see the light on Brown's Point? A. Yes sir.

Q. Did you pass Robinson Point that night?

A. Yes, we passed Robinson Point.

Q. Was the light burning. A. Yes sir.

Q. About what time did you pass Robinson's Point?

A. No, I don't know whether the light was burning or not.

Q. You don't know?

A. Because I don't remember whether it would be sun down.

Q. But you know—

A. (Interrupting) I know if the light was not burning and we went past there and it was not burning I would see it.

Q. You know that you were on watch, though, before you reached Brown's Point? A. Yes.

Q. Did you see or report any large vessels going out of the harbor of Tacoma that night except this vessel to which you have testified? A. No sir.

Q. Do you remember of reporting any other vessel going out of there. A. Not any large vessels.

Q. No large vessels. A. No.
Q. Nothing except sound steamers?
A. That is all.
Q. You are certain of that?
A. Yes. Not any ocean-going vessel.
Q. You were the only lookout on duty that night, were you? A. Yes.
(Witness excused.)
A recess was here taken until 2:15 o'clock this afternoon.

AFTERNOON'S PROCEEDINGS,
September 20, 1912.

PRESENT: Same parties as at former hearing.

HOWARD PENFIELD, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:
Q. (Mr. Lawrence Bogle) State your full name?
A. Howard Penfield.
Q. What is your business? A. Master mariner.
Q. Do you hold a master's license? A. Yes.
Q. Master's papers. Do you hold a pilot's license?
A. Yes.
Q. In what waters?
A. Inland water, Puget Sound, tributaries and adjacent waters.
Q. How long have you held that license?
A. Twelve years.
Q. How long have you held master's papers?
A. Twelve years.
Q. And how long have you been following a seafaring life? A. Thirty years.
Q. You have been twelve years of that time on the Sound, have you? A. Yes sir.
Q. How old a man are you, captain?
A. Fifty-one.
Q. You are master of the steamer "Indianapolis" during the month of January of this year, were you?
A. Yes sir.
Q. On the run between Seattle and Tacoma?

A. Yes sir.

Q. Captain, on the night of January 12th did you pass the steamer "Strathalbyn"?

A. Yes, sir.

Q. Where did you pass or meet her the first time?

A. I met her at Brown's Point.

Q. She was headed which way?

A. She was headed to the northward.

Q. She was coming out of the harbor?

A. Yes.

Q. And you were going into the harbor?

A. Yes sir.

Q. What did you first notice about the steamer "Strathalbyn," what attracted your attention to her?

A. Saw her masthead light first.

Q. At that time, captain, could you tell what course she was on—the "Strathalbyn"? A. No sir

Q. Was this masthead light moving? A. Yes sir.

Q. Was it moving across your course. A. Yes sir.

Q. How could you distinguish that masthead light, tell that it was moving?

A. I saw it from the other lights in Tacoma on the background, it was moving across my bow.

Q. It was moving across the stationary lights of Tacoma. A. Yes sir.

Q. And that is what attracted your attention?

A. Yes sir.

Q. At that time could you see any other lights aboard the "Strathalbyn"? A. No sir.

Q. Could you make out the hull of the vessel?

A. Not then, no sir.

Q. The only thing that you had to go by, that you knew that there was a vessel or any craft ahead, was this one light which was moving across the lights of Tacoma? A. Yes sir.

MR. HAYDEN: Let the witness testify, will you please, and not ask him leading questions.

Q. (Mr. Lawrence Bogle) About what time was that, captain?

A. That was about 6:34, something like that.

Q. Did you say p. m.? A. Sir?

Q. Did you say p. m., in the evening?

A. P. m., yes sir.

Q. After that, captain, did you see any other lights on the "Strathalbyn"?

A. Not until I got pretty close to her.

Q. Then what lights did you see?

A. I saw her side light.

Q. Which one? A. Starboard side light.

Q. About how far away were you when you saw that? A. Oh, about a quarter of a mile.

Q. Were you ahead of her or abeam.

A. Practically ahead.

Q. About how many points off was the bearing of this light?

A. It was about a point and quarter, something like that, on my starboard bow.

Q. How did you pick that light up, captain?

A. I saw it first with my glass.

Q. Picked it up with the glasses? A. First, yes.

Q. You could still see the headlight, could you?

A. Yes sir.

Q. And you were looking for side lights?

A. Yes sir.

Q. What kind of a light was that, captain?

A. The starboard light?

Q. Yes. A. What kind of a light was it?

Q. I don't mean as to color, but as to brightness?

A. Well, it was pretty dim at first.

Q. Would you call it a dim light? A. Yes sir.

Q. How far were you away before you saw it with a naked eye, captain?

A. Well, I could not say exactly; up pretty well abeam.

Q. Pretty well abeam of her? A. Yes sir.

Q. Captain, will you draw on this chart or lay out as nea ras you can your course in making Brown's Point-Tacoma?

A. You haven't got dividers here, have you?

Q. No. We might have this in red ink, to distinguish it from the others.

MR. HAYDEN: Might as well.

THE WITNESS: I will make this do.

Q. (Mr. Lawrence Bogle) You may have to use black ink.

A. No, that is all right. (Witness marking with pen and red ink.) That is my course. I rounded Dash Point a quarter of a mile off, and Brown, that evening I was about an eighth of a mile.

Q. I will mark this, your course going to Tacoma, an arrow with "Indianapolis" on it. That is your course going into Tacoma—that was your course, rather?

A. Approximately, yes sir.

Q. Captain, where were you when you first saw this masthead light of the "Strathalbyn," if you can show that—

A. (Interrupting) Just rounded Dash.

Q. What course was she on at the time?

A. She was coming out of the harbor. I could not tell the course. I only saw his masthead light, opened up past high land here on Brown's Point—here is a high knoll up here—I saw his masthead light just as I rounded on my course at Dash—not long, maybe a half a minute or something like that, past this high land here—there is a knoll in here at Brown Point—and his masthead light is pretty low, and he opened up his masthead light and I could not tell his course coming out, whether he was heading off here or coming on an angle like this. (Witness illustrating.)

Q. Just indicate there about your position when you first saw this side light of the "Strathalbyn"?

A. What will I do, draw a line across there or put a dash in?

Q. Put a cross there.

A. (Witness does as requested.)

MR. HAYDEN: What is that supposed to be?

Q. (Mr. Lawrence Bogle) The "X" which you have marked under the words "Dash Point" there—

A. That is my position when I first saw his masthead light.

Q. Indicate on this course your position when you first saw his starboard light?

A. (Witness marks "X".)

MR. HAYDEN: Put a circle around that. I think it would be a good way to distinguish it.

(Witness does as requested.)

Q. (Mr. Lawrence Bogle) Well, the point you have marked with a "X" in a circle is your position when you first saw his starboard light? A. Yes sir.

Q. Now, from the bearing of that light, I wish you would locate the light on the map—that is, the steamer with the light, as to her position.

MR. HAYDEN: You mean the "Strathalbyn's" position?

MR. LAWRENCE BOGLE: Yes.

A. (Witness marks) About there.

Q. (Mr. Lawrence Bogle) Could you tell her course, captain?

A. About there. About a point and a quarter on the starboard bow.

Q. (Mr. Hayden) Will you mark that dot there so that we can identify it? I don't mean making it bigger, but so that we can identify it in some way.

MR. LAWRENCE BOGLE: I wanted to get the captain, if he could—

THE WITNESS: (Interrupting) What do you want, an "X" there? I can put another circle around it.

Q. (Mr. Lawrence Bogle) Better mark that with the letters "Strath."

A. (Witness does as requested.)

Q. Captain, could you tell at that time what course the "Strathalbyn" was on?

A. It was very near parallel to mine. She was heading a little broad on me, very near a parallel.

Q. By "broad" you mean—

A. (Interrupting) A little sider; he was steering a little wider, steering a little more to the eastward—or to the westward, rather.

Q. Just put his course on there.

A. This is guesswork on his.

Q. Of course, you could see his masthead light then and his side light. A. (Witness marks.)

Q. I will mark that an arrow with "Strath. course" (marking). Captain, if the starboard light of the "Strathalbyn" had been properly set and burning and

unobstructed, would you have seen it before you had reached the point you have indicated here?

MR. HAYDEN: I object to that as calling for a conclusion and immaterial. A. Yes sir.

Q. (Mr. Lawrence Bogle) It would have been visible to you for some distance, would it?

MR. HAYDEN: Objected to as immaterial.

A. Yes sir.

Q. (Mr. Lawrence Bogle) Captain, after passing the "Strathalbyn" you went on into Tacoma, did you—after passing the "Strathalbyn" at Brown's Point you proceeded on your voyage to Tacoma?

A. Yes sir.

Q. And what time did you leave Tacoma for your return voyage to Seattle? A. Seven p. m.

Q. Did you pass the steamer "Strathalbyn" again on that voyage? A. Yes sir.

Q. About where did you pass her?

A. About a mile to the northwestward of Robinson Point.

Q. Do you remember what time you passed Robinson point on that night?

A. If I remember correctly, it was 7:41 or—40—40 or—41.

Q. Do you remember about what time it was that you passed her?

A. I passed her about four minutes after; —45 or —46; I ain't sure which.

Q. What attracted your attention to her at this time, captain?

A. Well, I looked at the—what made me look at the clock was I thought it was funny she hadn't got any further from the time I met her at Brown's Point until I overtook her and passed her to the northward of Robinson.

Q. Could you see any lights on her, coming up the stern of her. A. No sir.

Q. Have any stern light?

A. No sir. I saw a couple of lights in the cabin when I got very close to her, in the chart house, somewheres around—port hole lights they were—round.

Q. That is after you were passing her?

A. That is to the northward and westward of Robinson, yes sir.

Q. What was the first that you saw of this vessel, what first attracted your attention?

A. The loom of her.

Q. Did you know what it was at the time?

A. No sir.

Q. Did you know it was a vessel?

A. I thought it was a sail boat of some kind.

Q. What did it look like, captain, in the water?

A. Looked like a dark object.

MR. HAYDEN: I object as immaterial.

Q. (Mr. Hayden) Coming up to the stern of her, weren't you, captain? A. Yes sir.

MR. HAYDEN: Objected to as immaterial.

Q. (Mr. Lawrence Bogle) Was she pretty hard to pick up?

A. Well, she was about—not very hard, when I got close enough to her.

Q. How close were you to her before you picked her up, coming up stern of her?

A. Well, pretty close to her, I could not tell exactly; maybe a quarter of a mile.

Q. Probably a quarter of a mile. A. Yes.

Q. And did you change your course any to pass her? A. Yes sir.

Q. You passed her on what side?

A. Passed aport of her.

Q. (Mr. Hayden) On your port?

A. Passed her on my port, yes sir.

Q. (Mr. Lawrence Bogle) Did you see any of her side lights at this time?

A. Not until I got abeam—pretty near abeam.

Q. Well, what lights did you see?

A. The starboard light, green light.

Q. How far off were you when you saw this light?

A. The green light?

Q. Yes, how far were you off from the "Strathalbyn"?

A. I was pretty close to her; maybe—well, inside of 50 yards, I guess.

Q. How did the light appear at this time, captain?

MR. HAYDEN: I object to it as immaterial.

A. It appeared a little brighter to me.

Q. (Mr. Lawrence Bogle) What was your course in passing her, with reference to her course?

A. It was—he was steering a little broader than me; he was pretty near parallel with my course—not exactly—he was a little over to the westward—his course was a little more to the westward than mine.

Q. You were making better way than he was, weren't you? A. Yes.

Q. Did you watch this green light as you passed him? A. Yes sir.

Q. And for how long a time could you see it?

A. Oh, probably inside of a quarter of a mile after I passed him.

Q. Then what happened to it?

A. It commenced to fade away again. Acted about the same when I was leaving it as it did when I was coming up on it at Robinson—Brown's Point, rather.

Q. What do you mean by that?

A. It seemed to fade away as if something was obscuring the light.

Q. You were about how many points off her bow when it faded away?

MR. HAYDEN: This is all objected to as immaterial.

A. About a point, about the same angle as I met him at Robinson; maybe a little inside of that, maybe three quarters of a point.

Q. Then, captain, there was some little space directly ahead of this vessel, where her lights were not visible?

MR. HAYDEN: I object to that as leading.

Q. Is that true?

MR. HAYDEN: And suggestive.

A. The starboard light was.

Q. I didn't get your answer.

A. The question again, please.

(Question read.)

A. The starboard side light. Could not vouch for any port side lights.

Q. You were not in a position to see her port light?

A. No sir.

Q. Did you notice her masthead light at this time, captain? A. Yes sir.

Q. How did that appear, as to brightness?

A. Well, it was not very bright. A dim light.

Q. Did you watch it for any length of time after passing her?

A. Not after I lost the side light. I didn't look back after that?

Q. You didn't see the masthead light after you were a quarter of a mile ahead? A. No. sir.

Q. After passing the "Strathalbyn," captain, did you continue on your course to Seattle? A. Yes sir.

Q. Did you pass the "Flyer"? A. Yes sir.

Q. And the "Virginian," after that? A. Yes sir.

Q. About where did you pass the "Flyer" and the "Virginian"?

A. To the southward of Three Tree—Pully Point.

Q. And what side did you pass them?

A. I passed aport of them.

Q. About how far away?

A. Well, we were probably three eighths of a mile.

Q. What was the position of the "Flyer" and the "Virginian" at that time?

A. They were neck and neck.

Q. About how far were they south of Pully?

A. Oh, about a half a mile, I should judge.

Q. Had you heard any whistles up to that time?

A. No sir.

Q. Do you remember what time you passed Pully on this night?

A. It was either 55—7:55 or —56.

Q. And do you remember what course you steered from Robinson to Pully?

A. I know my compass course.

Q. What was that?

A. Northwest three eighths north.

Q. Is that true or magnetic?

A. That is compass course.

Q. Your ship's compass?

A. That would be about northwest three fourths north magnetic.

Q. Did you change your course any to pass the "Strathalbyn" at Robinson? A. Where?

Q. North of Robinson? A. Yes sir.

Q. And you passed her about parallel courses?

A. Very near, very near. She was steering more to the westward than me; she was steering a little broader course.

Q. And you passed about how far off of Pully?

A. Off Pully?

Q. Yes.

A. I passed off Pully about three-eighths of a mile; maybe a quarter—three eighths—about three eighths.

Q. Could you tell anything as to the course of the "Virginian" and the "Flyer" at that time?

A. Not exactly, no sir.

Q. Captain, what was the appearance of the "Strathalbyn" on the water, was she a hard vessel to pick up? I don't think I asked you that.

A. Yes sir.

Q. After she had passed Robinson?

A. Both times.

Q. What do you mean by that, captain, why was she hard to pick up?

A. Well, she was very deceiving, couldn't tell what she was or what it was, whether it was a scow or a sailboat or—the general appearance of the ship was deceiving on the water; you couldn't tell which way she was heading or anything else about her, whether you were meeting her headon or going up astern of her.

Q. Unless her lights were visible, you think she would be a hard vessel to pick out, coming headon, do you?

MR. HAYDEN: I object to that as leading.

A. Yes sir.

Q. (Mr. Lawrence Bogle) Could you see how she was loaded, captain?

A. We could see, after we got up close to her, she had a deck load of lumber on.

Q. Was she pretty low in the water?

A. She was on my side. She had a list, the side I passed her on.

Q. (Mr. Hayden) Listed over towards starboard?

A. Yes sir.

BY MR. W. H. BOGLE:

Q. Did you see the collision, captain? A. No sir.

Q. Did you know there had been one that night?

A. I could not have swore to it, but I surmised as much.

Q. What caused you to surmise as much?

A. After I passed the "Flyer" and "Virginian" and I got up abreast of Three Tree, I heard one whistle, a passing whistle; I took it to be the "Flyer's" whistle; and I heard no answer, and I ran by Three Tree for a little bit and held her on her course—if I changed my course it would throw me out so that I could not see back—and I saw the "Flyer's" port side light; I knew then something was going wrong, and I saw the cluster of lights, which probably was the "Virginian's" lights, laying broadside to, it looked like, and cross angling the "Flyer's" port lights showed up. That is the only inkling I had of anything wrong until I arrived back in Tacoma.

Q. Were you looking for trouble among those boats, captain? A. Yes sir, I expected it.

Q. Why?

A. Why, the bad lights that the "Strathalbyn" had, and her general appearance on the water that night.

Q. Did you hear any other whistle than the one whistle which you supposed to be the "Flyer"?

A. No sir.

Q. Captain, was that masthead light of the usual brightness of mast-lights carried by vessels on these waters?

MR. HAYDEN: I object to that as leading.

A. No sir.

Q. Mr. Bogle.) Was the side light of the usual brightness?

MR. HAYDEN: Same objection.

A. No sir.

Q. (Mr. Bogle.) Captain, on your approaching the "Strathalbyn" while you were on your way in to Tacoma, near Brown's Point, did the "Strathalbyn" have any range light? A. No sir.

Q. Did you have any difficulty in picking up a side light? A. Yes sir.

Q. You were on a special lookout for a side light, were you? A. Yes sir.

Q. When you reached the point at an angle where ordinarily the side lights should have been in view, were you looking for one? A. Yes sir.

Q. Did you see any? A. No sir.

MR. HAYDEN: I object to that.

Q. (Mr. Bogle.) Did you look out to port any?

A. No sir.

MR. HAYDEN: I object to that on the ground that the captain said he didn't know the angle on which the "Strathalbyn" was approaching him, and move to strike it out.

Q. (Mr. Bogle.) How far did you go after you reached a point when the side light should have been visible to you before it opened up so that you could see it? A. About three quarters of a mile.

Q. (Mr. Bogle.) Could you tell the course of the "Strathalbyn" during that time you were passing three quarters of a mile? A. Not accurately.

Q. Could you tell her approximate course?

A. Yes sir.

Q. Was it such a course as ought to have made the side light visible to you?

MR. HAYDEN: Same objection.

A. Yes sir.

CROSS EXAMINATION.

O. (Mr. Hayden) Now, captain, when you first saw the light of the "Strathalbyn", when the "Indianapolis" was at this position marked "X", how far away was the "Strathalbyn" from you, that is, as you were going into Tacoma?

A. About a mile and an eighth, I should judge; I could not tell how close he was to Brown's, coming out. He might have been a little further off here or pretty close in here; I could not tell, you see.

Q. Those big ships usually run quite a ways off the Point?

A. Not always. They come pretty close sometimes.

Q. Might have been a mile and a half?

A. Oh, no. He would have been ashore then on the other side.

Q. I say, a mile and a half from you?

A. Oh, a mile and a half. No sir, no sir.

Q. Well now, captain, I just want to refresh your memory here. In testifying before the inspectors, do you remember Captain Turner asking you the question, "You saw it all right, didn't you?" And your answering, "Yes, I saw the masthead light. You could see the masthead light. I saw it going into Tacoma. I saw it about a mile and a half when I met him at "Brown's Point"? A. There is a mistake—

Q. I want to call your attention to it.

A. But when you come to measure it off, you see I had rounded on my course here and I was fully an eighth to the southard of the beam of Dash, when he opened up here. Now, it is a mile, it is just exactly—I wish I had a pair of dividers here—I didn't have a chart before me to measure these distances off. I knew it was a mile from Dash to Brown—it is exactly a nautical mile from Dash to Brown. Well, whatever distance he was off here I don't know.

Q. That is south of Brown's? A. Yes.

Q. As he came out there?

A. But he was not a half a mile, I don't think. He would not keep off there a half a mile.

Q. And you saw his masthead light then?

A. Whatever distance that was from where he was to where I was was the distance I saw his masthead light.

Q. And you saw it just as he did open out around the Point, just as he came out around the bluff?

A. Just as he passed this high land here, he was running pretty near right angles to me, pretty near.

Q. Then he swung around the Point and came up on the same parallel course—a course parallel, very near paralleling yours? A. Yes sir.

Q. That is, paralleling your course from Dash Point to Brown's Point? A. Practically, yes sir.

Q. Now, when you got down to Robinson Point going back you say he was holding off to the westward or eastward of your course?

A. He was steering to the westward, broader than mine.

Q. He would be to the westward of your course?

A. Yes.

Q. Was there any other vessel like the "Strathalbyn" in your vicinity when you were coming around Robinson Point, coming back?

A. Yes sir, on my return trip—seven o'clock trip out of Seattle.

Q. No, out of Tacoma, when you were passing, overhauling the "Strathalbyn", just before the collision, at the time you have been testifying to, was there any other steamer there? A. No sir.

Q. Just you and the "Strathalbyn"? A. Yes sir.

Q. You never were in a position where you would see the port light, were you? A. No sir.

Q. Could you see these lights in the cabin, that you have mentioned, or the chart room, or any other lights on this vessel in the neighborhood of the chart room, as you drew ahead of her. A. No sir.

Q. You didn't see any lights there?

A. No sir. I saw them when I was abeam of her.

Q. It is all glass in the room, though, isn't it?

A. I could not say.

Q. The front of the house is all glass?

A. The "Indianapolis" pilot house?

Q. No, the "Strathalbyn's"—

A. (interrupting) I could not say.

Q. (Continuing) —chart room house?

A. I don't know.

Q. Now, when you passed the "Flyer", how much was she ahead of the "Virginian" down here in the vicinity of Pully Point? A. Not any.

Q. You mean that if the positions of the vessels were marked on a line at right angles to the course that you would steer between Robinson's Point and Pully Point, the bow of the "Flyer" and the bow of the "Virginian" would be the same, on the same line?

A. With my position, yes sir.

Q. And how far do you say that was beyond or to the south of Pully Point?

A. That was probably a half a mile, approximately a half a mile.

Q. At the time you passed the "Virginian" and the "Flyer", how far away were you from the "Strathalbyn"?

A. Oh, about two miles, two miles and a quarter.

Q. The "Strathalbyn" was going pretty slowly that night, was she? A. Yes sir.

Q. You passed her at what time?

A. Brown's Point, seven—or 6:35.

Q. 6:35? A. 6:35 or —36.

Q. That was right at the point, was it?

A. That was right at the turn, yes sir.

Q. At Brown's Point. And you passed her at what time, coming back, at Robinson's Point?

A. 7:45—45 or 46, I ain't sure which.

Q. And she was how far to the north of Robinson's Point? A. One mile.

Q. Could you notice how far the "Virginian" was off Pully Point when she turned?

A. I could not say exactly, no sir.

Q. Did you notice how far the "Flyer" was from the "Virginian"? A. Pretty close.

Q. Did you hear the "Flyer" whistle to pass the "Virginian"? A. No sir.

Q. When you say "pretty close" about what do you mean by that, captain?

A. Well, when they rounded—well, she was off on the further side of the "Virginian", I could not tell exactly how close she was, you know. The angle they laid on from me I could not—it would be pretty hard; I know she was pretty close.

Q. Well, when you passed the "Flyer" and the "Virginian", how far was the "Flyer" away from the "Virginian"? A. I could not tell.

Q. Can you approximate it?

A. I could not even approximate it. I know it was right abeam, just the same as something like taking that paper off of this book and take them off three eighths of a mile; pretty hard to tell.

Q. How far were you from the "Virginian"?

A. About three eighths of a mile, I guess, approximately that; might have been a little under.

Q. Well, you saw the "Virginian" and the "Flyer" coming down towards you? A. Yes sir.

Q. And you are unable to say about how far apart they were? A.No sir.

Q. What time was it you said—I have forgotten—what time was it you said you passed the "Virginian" and the "Flyer"? A. About 7:54, I judge.

Q. Did you hear the "Flyer" whistle to the "Strathalbyn"?

A. I heard the "Flyer's" whistle. I don't know who she whistled to.

Q. Did you hear the "Strathalbyn's" whistle?

A. No sir.

Q. You heard the "Flyer" whistle to one boat after you passed the "Virginian" and "Flyer"? A. Yes sir.

Q. How far were you from the "Virginian" and the "Flyer" when you saw the lights mixed up together—or how far were you from the "Strathalbyn" and the "Virginian" when you saw the lights mixed up together?

MR. BOGLE: I don't think the captain testified he saw the lights mixed up together.

A. If I understand, he asked me how far I was away from them—when I noticed the "Flyer's" port side light.

Q. (Mr. Hayden) The side light and these other lights you said were closest together?

A. Well, I ran by him three minutes past—let me see—two miles and a half.

Q. What?

A. Two miles and a half, might probably have been three miles, I could not tell exactly.

Q. How many lights did you see in the nature of headlights or masthead lights?

A. I could not tell whether there was—just saw a cluster of lights together, bright lights; saw no colored lights, only on the "Flyer".

Q. How long did you notice these lights together?

A. Oh, just a glance, just opened the door and glanced out. Just the fraction of a minute.

Q. Until you heard the whistle, as I understood you

to say, captain, you did not look around to see the vessels at all after you passed the "Strathalbyn"?

A. No sir.

Q. Until you heard the "Flyer's" whistle?

A. No sir.

Q. But you did look around when you heard the "Flyer's" whistle? A. No sir.

Q. I didn't quite get it straight then. What was it?

A. I did not look back until I got to Three Tree; I heard the "Flyer" blow her whistle, but I did not look back then even—heard no reply to it, but I didn't look back.

Q. You looked back sometime?

A. At Three Tree Point.

Q. At Three Tree? A. Yes sir.

Q. Or beyond Three Tree? A. At Three Tree.

Q. Was that the time you saw these vessels' lights all mixed up together? A. I saw the "Flyer's" light.

Q. And a cluster of lights of the other vessels'?

A. Yes sir.

Q. That was, then, after Three Tree or Pully Point? A. Yes sir.

Q. And you did not look after that at all, then?

A. Pully.

Q. After you passed Pully Ponit?

A. Oh, yes, I ran beyond them a couple of minutes past, I guess—

Q. (Interrupting) Were you looking back at these vessels then? A. Yes sir.

Q. So you were looking at this mixup there, whatever it was, for about two or three minutes?

A. Oh, I just glanced at it, you know; was walking backwards and forwards across the pilot house, and there was a window in the after end of the pilot house and I glanced through that every time I walked across, and just before I changed the course I opened the door and looked out. That was probably a minute or a minute and a half after rounding Three Tree.

Q. Did you blow to the "Virginian"—whistle to the "Virginian"? A. No sir.

Q. Did she whistle to you? A. No sir.

Q. While you were looking back at these lights, could you tell anything about the courses or changes of courses that were taken either by the "Virginian" or the "Strathalbyn"? A. No sir.

Q. You did not hear the report of the coming together of these two boats, did you? A. No sir.

Q. You didn't know there was a collision?

A. No sir.

Q. That is why you did not turn around, is it?

A. No, I didn't think about that—turning around.

Q. The "Flyer" was a good deal closer to the scene of collision than you were, wasn't she? A. Yes.

Q. Will you please indicate, captain, the position of the "Indianapolis" and the "Strathalbyn" between Pully Point and Robinson's Point when you passed her, going to Seattle? A. Do you want this in red ink, sir?

Q. Yes, better make it all in red ink.

A. (Witness marks with red ink) There was the "Strathalbyn" right here.

Q. Right here. You refer to a cross in red?

A. Yes.

Q. I will mark a line out from that cross in red and mark it "P" for "Penfield."

A. This is her course on here.

Q. Which one do you refer to as her course?

A. This one here I have marked northwest half north magnetic.

Q. Write "Strathalbyn" then on that. "Strath." is good enough.

A. (Witness does as requested.)

Q. Now then, that is the course of the "Strathalbyn" as you took it to be? A. Yes sir.

Q. You do not mean to say that was her absolutely accurate course, do you?

A. No sir, that is approximately.

Q. The lines marked in red between Robinson Point and Pully Point, with the letter "S" and "S" is what you testify to be the "Strathalbyn's" course; is that right? A. Yes sir.

Q. And the arrow marked in red with "I" and "I" is the "Indianapolis' " course; is that right?

A. Yes sir. I want this—these courses that I have

run off, if he was in a little closer than I have allowed him of course that would throw his course in closer to this "X", you see. I don't know how far he was off. I was practically an eighth of a mile off; he might have been a little closer than that; I don't know how close he rounded Robinson, but then that would make a vast difference in his course up here; that would run this crossing line away back here, you see, if he rounded inside of a quarter of a mile, and that is a little wide quarter of a mile that I have got there for him. If I had a pair of dividers—

Q. (Interrupting) You do not pretend this is absolutely accurate. Is your course absolutely accurate too?

A. Approximately so, yessir. I round there every trip just about an eighth of a mile.

Q. And how far from Pully Point?

A. Off there about an eighth, or three-eighths.

Q. Did not change your course on account of the "Virginian" and the "Flyer" coming down to meet you at this time? A. No sir, they were outside of me.

Q. Now then the "Indianapolis", as she came around Robinson Point and was overtaking the "Strathalbyn", was at first on the port quarter of the "Strathalbyn" and then went over to her starboard quarter?

A. Yes sir.

Q. About what position were you in when you went from her port quarter over to her starboard quarter?

A. She was about right ahead of me.

Q. Yes, but I mean how far to the north of Robinson's Point? A. How far was I?

Q. When you made your maneuver there?

A. I was probably a quarter of a mile off here, maybe a little under; pretty close to it.

Q. That would be a quarter of a mile from the "Strathalbyn" toward Robinson Point? A. Yes sir.

Q. You made that change of course after you had seen the "Strathalbyn"? A. Yes sir.

Q. Now, indicate on this chart here where you passed the "Flyer" and the "Virginian"?

A. (Witness does as requested.)

Q. Now, you made that mark on the "Indian-

apolis' " course. Of course they were not on the "Indianapolis'."

A. That is where I was.

Q. Yes. Now, I want you to mark—before we get to that we will do this: This cross that you have made on the "Indianapolis' " course is the point where you passed the "Flyer" and the "Virginian"? A. Yes sir.

Q. I will draw a line out from that and mark it "P. F. V." (marking). Now, both the "Flyer" and the "Virginian", captain, were to the west of you?

A. Yes sir.

Q. What speed does your boat make?

A. She makes fifteen knots.

Q. She was running fifteen knots this night between Robinson and Pully Point, was she? A. Yes sir.

Q. Captain, you would not say that the masthead light on the "Strathalbyn" was a poorer light than you would expect to find on a vessel that was burning oil in the lights, would you?

MR. BOGLE: I object to that. He has testified that it was.

A. Yes sir, if the lights were in shape.

Q. (Mr. Hayden) No, captain, I want to ask you if you did not testify before the—just to refresh your memory—it is sometime since you testified—

A. Yes sir.

Q. (Continuing) —before the inspectors, and ask you if you remember Captain Whitney asking you "Was his masthead light"—referring to the "Strathalbyn's" light—"any poorer than you would expect to find in a vessel that was burning oil in the lights?" And you answered "Well, I would not say"?

A. I think that is correct.

Q. You think that is correct. You think at the time you made that statement you were accurate and correct in it, do you? A. Yes sir.

Q. What way was the wind blowing at the time you were between Pully and Robinson Point?

A. If I remember correctly, it was a calm night.

Q. Well, what kind of a night was it?

A. It was a dark night, clear atmosphere—atmosphere was very clear.

Q. It was a good night to see lights, was it?

A. Yes sir.

Q. What was the nature of the night for determining distances on the water? A. It was not bad.

Q. You think you could tell distances pretty well that night, do you? A. Yes sir.

Q. What colored light is there on Robinson's Point? A. A fixed red light.

Q. A steady light? A. Yes sir.

Q. Oil-burning light? A. Yes sir.

Q. What kind of a light is on Pully Point?

A. Bright light.

Q. White light? A. White light, yes sir.

Q. Did you pass, coming up between Brown's Point and Robinson's Point, any other vessels?

A. I didn't notice any, no sir.

Q. You didn't notice the lights of any other vessels at all? A. No sir.

Q. These courses you have put down here, captain, are they compass courses or magnetic courses?

A. Magnetic.

Q. Well, that is a compass course, isn't it, a magnetic course? A. No sir.

Q. On this chart, figuring out these courses, which one of these marks on the compass of north would you be using? A. Magnetic north.

Q. Which one is that? A. It is marked there.

Q. Just show us, please, will you?

A. There is the magnetic north right here (indicating).

Q. (Mr. Bogle) The arrow.

A. The arrow, on the arrow head.

Q. (Mr. Hayden) The one that is marked with a line out from it "magnetic"? A. Yes.

Q. And that is the north that you were taking in fixing these? A. Yes.

Q. And the one with the star is the compass north?

A. No sir, that is true north.

Q. True north? A. Yes sir.

Q. Now, where was the compass north, that is anything that happens to be, according to variation and deviation of the compass?

A. According to the deviation and local attraction on ship. Sometimes it is east and sometimes it is west. Varies on different courses.

Q. I see. I think that is all now.

REDIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Captain, is the course of the "Indianapolis" which you have marked on the map by the red line "II", from Robinson Point north, the regular course of the "Indianapolis"?

A. That is approximate, yes sir.

Q. Did you change your course that night?

A. I did, yes sir.

Q. At what point?

A. At—it is marked there a mile to the northward of Robinson—to the northward and westward, marked "X".

Q. Why did you change your course there?

A. To avoid a collision.

Q. With what vessel?

A. The steamer that I found afterwards to be the "Strathalbyn".

Q. How far were you from the "Strathalbyn" when you made that change? A. Well, pretty close.

MR. HAYDEN: I think that has all been gone over on direct and cross.

A. Under a quarter of a mile.

Q. (Mr. W. H. Bogle) What lights of the "Strathalbyn" could you see at that time?

MR. HAYDEN: I object to it as immaterial and already been gone over.

A. I didn't see any light. Of course I changed my course.

Q. (Mr. W. H. Bogle) How did you know there was any other vessel in front of you?

A. I saw a dark loom, a dark object.

Q. The vessels were approaching at that time, were they? A. I was approaching him, yes sir.

Q. Mr. Hayden) You were overhauling him?

A. Yes sir.

Q. (Mr. W. H. Bogle) Did you pass any other large cargo vessel that night on either your trip to Ta-

coma or the return from Tacoma to Seattle, except the "Strathalbyn" and the "Virginian"?

A. Not on that round trip, no sir.

Q. Indicate on the map about what your position was when you looked back and saw apparently some confusion among these vessels that you had passed?

A. Abreast of Three Tree.

Q. Abreast Three Tree, where you have marked a star on the course of the "Indianapolis"? A. Yes sir.

Q. You spoke of seeing a cluster of lights; what lights did you see?

A. They were bright lights, white lights.

Q. Did you see the light of the "Strathalbyn"?

A. No sir, I don't think so.

Q. The lights you saw then were the lights of the "Flyer" and the "Virginian"? A. Yes sir.

BY MR. LAWRENCE BOGLE:

Q. Captain, when you were off Pully or thereabouts and looked back and saw that cluster of lights had you seen the "Flyer" turn so that her port light was visible?

A. I didn't see her turn. When I looked back I saw—

Q. (Interrupting) You saw her port light at the same time? A. Yes sir.

Q. About where on the map did that cluster of lights appear to be?

A. Well, it appeared to be about half way or a little more, it might have been, I couldn't tell exactly only from the distance I had run, that is all I have gone by, when I looked back.

Q. You don't think you were beyond Pully?

A. When I looked around the first, that is where I noticed them first—Pully.

Q. Will you indicate just about where they were?

A. The "Strathalbyn" was making six miles an hour and I was making fifteen miles an hour—fifteen knots—these are nautical miles—and I passed him forty —.45 or .46, I won't be sure—of course I have got that down in that other testimony there, if I had it exactly I could tell exactly, but I ain't—it was either .45 or .46, and that is ten minutes lapsed; from the time I passed

him until I got abreast Three Tree she would cover just a mile—the "Strathalbyn" would cover a mile during that time, so that would make her just about two miles from Robinson, as near as I can get to it.

Q. Captain, do you know, as a matter of fact, she was only making six miles?

A. I know she was making only six miles; that is what I looked at my clock before I rounded Robinson, I was surprised she was not making more than six miles an hour when I overtook here here, when I took her for a sail boat; I says to the quartermaster, "That looks like a sail." He says "I guess it is that tramp." I says "My gosh! he has got further than this." And come to find out it was her. And then I looked at the clock and it was an hour and ten minutes since I passed her here, that I met her at Brown's until I overtook her and passed her north of Robinson. You haven't got to be aboard a ship to tell what time she is making. That is the way I figure it out. (Witness marking.)

Q. (Mr. Hayden) What is that supposed to be, captain?

A. That is supposed to be approximately the position of the collision.

Q. (Mr. Lawrence Bogle) The large circle here marked with a big "C" is where you think the collision took place? A. Yes sir.

Q. Now, how far did you proceed on that—

A. (Interrupting) That is a rough estimate.

Q. Your testifying as to times and distances here, it is all more or less a rough estimate, isn't it?

A. Yes sir.

Q. How far did you continue on your course past Pully?

A. Well, probably three eighths of a mile, a minute and a quarter, something like that.

Q. And how far north of Pully do you think you were the last time you looked out there?

A. That is what I mean, that I looked out the last thing about a minute and a quarter—about three eighths of a mile.

Q. You could still see those lights back there?

A. Yes sir.

Q. When I saw the "Strathalbyn's" masthead light coming around Brown's Point at Tacoma, that light, as I understand, was passing across the stationary lights ashore? A. Yes sir.

MR. HAYDEN: Let the captain testify, will you?

Q. (Mr. Lawrence Bogle) Would that attract your attention any sooner than if the light had been coming straight toward you? A. Yes sir.

Q. Why is that?

A. Well, it is moving, it was moving across on an angle—right angle to my course, or pretty nearly so.

BY MR. W. H. BOGLE:

Q. Captain, you were asked by Mr. Hayden as to some statement you made before the inspectors, in regard to this masthead light on the "Strathalbyn". I will ask you if you did not make this statement at the same time, before the inspectors—

MR. HAYDEN: (Interrupting) I object to cross examining this witness, if that is what you propose to do.

Q. (Continuing) —"You saw her masthead light, you say?"—

MR. HAYDEN: (Interrupting) And on the ground that it is leading.

Q. (Continuing) "Captain Turner: You saw her masthead light, you say? A. Yes, I saw that; it was not extra good either. Q. Wasn't that a good light? A. No sir, it was not, it was not what you would call a bright light, it was not burning brightly." Was that your statement before the inspectors, at the time referred to by Mr. Hayden?

RECROSS EXAMINATION.

Q. (Mr. Hayden) What is the distance, captain, between Pully Point and Robinson Point?

A. Pully and Robinson?

Q. Pully and—yes, Pully and Robinson?

A. It is about three and three quarter miles; might be a fraction over, but very little. I generally call it four miles. To measure it down fine, it is about three and three quarters or seven eighths.

Q. Now, in answer to Judge Bogle you said you didn't think that you saw the masthead light of the "Strathalbyn" in this cluster of lights. You are not

sure that you did not see it, are you? A. Beg pardon?

Q. In answer to the direct question of Judge Bogle, you said when you looked back from Pully Point toward where you saw these ships' lights together, that you thought you did not see the masthead light of the "Strathalbyn"?

A. I could not tell whether it was the "Strathalbyn's" light, I would not vouchsafe for that, but I am very doubtful.

Q. You saw more than one light, though, did you?

A. I think it was very doubtful, though, that I could see her two miles off.

Q. But you saw more than one light, didn't you?

A. Yes, I saw a cluster of light.

Q. I mean more than one light up in the air too?

A. Well, I would not vouchsafe. I didn't pay much attention, only this red light of the "Flyer's" and the masthead light. The others I didn't pay much attention to, just the cabin lights.

Q. When you passed the "Strathalbyn" about a mile north of Robinson's Point, did you see her masthead light at that time? A. Yes sir.

Q. Was it burning about the same way then as it was burning when you saw it coming around Brown's Point?

A. Practically the same, yes sir; just about the same.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Was it as easy to pick up at that time? Of course at the time you saw it you were just passing the steamer, but from what you know of that—had seen of that light, what would you say as to it being an easy light to pick up of a vessel coming straight ahead.

MR. HAYDEN: I object to that as immaterial and calling for a conclusion of the witness.

A. I didn't notice his masthead light after I had passed him about a quarter of a mile. When his side light faded out, I didn't pay much attention to it after that; I didn't look to see how far you could see it. It appeared to me to be pretty low down to—lower than usual for a large vessel.

Q. Captain, are there any shore lights along Robinson Point or in at the Portage or over to the shore on the eastward?

A. Yes sir, along the shore of Vashon Island there is a lot of lights—bright lights—people living there, ranchers' lights.

Q. Were those lights as bright as the masthead light of the "Strathalbyn"?

MR. HAYDEN: I object to that?

A. A good deal brighter.

Q. (Mr. Bogle) O good deal brighter?

A. See them a good deal plainer, yes.

RECROSS EXAMINATION.

Q. (Mr. Hayden) There are no white shore lights close to Robinson's Point that you would see coming from Pully Point, are there?

A. There are two or three—three in there.

Q. Where are they?

A. One of them right close to the Point.

Q. That is the light of the lighthouse keeper on the Point?

A. No, up on the bluff here, there are two lights you see coming in from the northward.

Q. Were they burning that night?

A. I could not say. Then there is a bright light generally burns on Murray Dock; then there are a few more down here on this side, there are quite a number of lights there, if the tide is just right so that you can see them—the tide is high enough; when the tide is low down I could never make them out, but high water you can see them occasionally. Very often see a lot of lights over here; here there are quite a number over on this shore (witness indicating).

Q. Those lights on that shore, there would be no danger of mistaking them for a light on a ship that was out here between Robinson and Pully Point?

A. Some nights it keeps you guessing all right. See a bright light here (indicating).

Q. Lights they are using over there are nothing but lamps, are they, in the houses?

A. That is all, just simply lamps—kerosene lamps.

Q. Oil lamps in the houses? A. Yes sir.

Q. Have to see them through the windows—

A. (Interrupting) Yes sir.

Q. (Continuing) —of the houses? A. Yes sir.

Q. You can see the whole window then, can't you?

A. No, the light. You could if you were close enough, I guess.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) How high would you say this masthead light of the "Strathalbyn" was above the water?

A. I don't know; it was pretty low; lower than they usually have them; pretty low down; I could not tell exactly how high it was; maybe 20 feet.

Q. Above the water? A. Above the deck.

Q. (Mr. Hayden) Above the deck load?

A. Yes sir.

Q. (Mr. Lawrence Bogle) Could you approximate the distance above the water?

A. Oh, from the top of her deck load to the water could not have been over 20 feet. Not that, I guess, on the side she had the list. She had a list to starboard.

Q. The light then would be approximately 40 feet above the water? A. Yes sir.

Q. Captain, a person standing on the bridge of a vessel which was 40 feet above the water, approaching this light head on, wouldn't there be danger of mistaking that for a shore light?

MR. HAYDEN: I object to that as calling for a guess of the witness.

A. I think it would, yes sir.

Q. Would not this light of the "Strathalbyn" be in line on the course that you have shown here, with the shore light?

A. Yes sir, more so than it would if it was higher.

Q. That is, if the person looking at it was at the same level as the light? A. Yes sir.

Q. 40 feet above the water. Captain, there would be no danger of mistaking a colored light for any light ashore? A. No sir, unless it was Robinson light.

Q. (Mr. Hayden) Might be that, might it not?

A. Yes, if there was a colored light ashore it might.

MR. HAYDEN: That is all.

Q. (Mr. Lawrence Bogle) How is that Robinson light as to brightness?

A. It is a pretty bright light, yes sir.

Q. How far can it be seen?

A. Well, can see it a long ways, you can see it sometimes about seven or eight miles some nights.

Q. Captain, do you think there was any danger of mistaking the port light of the steamer "Strathalbyn" —confusing that with Robinson light on Robinson Point?

MR. HAYDEN: I object as calling for a conclusion of the witness. He surely cannot know what Mr. Duffy is going to confuse.

A. I would not say.

MR. LAWRENCE BOGLE: We object to the form of that—stating something into the record.

(Witness excused.)

MR. HAYDEN: Let the record show that I would like to have Mr. Duffy's testimony taken today while he is here.

MR. LAWRENCE BOGLE: I object to that. We can take Mr. Duffy's testimony any time we want to, and I object to Mr. Hayden trying to get that into the record, if he thinks he is going to gain any unfair advantage by the fact that Mr. Duffy is here. We can take his testimony any time we want. I know of nothing that makes it imperative on us to take his testimony today. I never tried to dictate to you as to when you would take your testimony.

An adjournment was here taken until some date to be hereafter agreed upon by counsel.

(Filed Oct. 15, 1912.)

## STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective attorneys, that depositions may be taken in behalf of the respective parties before Earl E. Richards, a Notary Public, at room 613 Central Building, Seattle, Washington, at the hour of 10:30 o'clock a. m. on October 28, 1912, and may be transcribed and read in evidence in behalf of the respective parties with the same effect

as though said depositions had been taken before the United States Commissioner to whom the taking of testimony in this cause was referred.

The signatures of the witnesses to the testimony as transcribed are hereby waived, and all other objections as to the time and manner of taking this deposition are hereby waived.

HUFFER, HAYDEN & HAMILTON,
Proctor for Libelant,
BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Respondent, Claimant and Cross-Libelant.

DEPOSITIONS OF PETER WICK, ET AL.

BE IT REMEMBERED, that on October 28, 1912, at room No. 613 Central Building, Seattle, Washington, at the hour of 10:30 o'clock a. m., before me, Earl E. Richards, a Notary Public in and for the state of Washington, appeared Mr. W. H. Hayden (of Messrs. Huffer, Hayden & Hamilton), proctor for libelant, and Mr. W. H. Bogle and Mr. Lawrence Bogle (of Messrs. Bogle, Graves, Merritt & Bogle), proctors for respondent, claimant and cross-libelant;

WHEREUPON the following proceedings were had:

PETER C. WICK, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary, to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name?

A. Peter C. Wick.

Q. What is your business?

A. I am mate of the "Indianapolis", sir.

Q. How long have you been mate of the "Indianapolis"? A. About thirteen months.

Q. Were you mate on the "Indianapolis" on the night of January 12th, 1912, the night of the collision between the steamer "Strathalbyn" and the "Virginian"? A. Yes sir.

Q. Did you pass the steamer "Strathalbyn" on that night? A. Yes, about five minutes after ten.

Q. Where was she at this time?

A. She was laying off Robinson Point.

Q. Headed in what direction?

A. Headed in a southerly direction, off towards the other shore.

Q. What first attracted your attention to her, Mr. Wick?

Q. (Mr. Hayden) What was this five minutes after ten—

A. (Interrupting) About the time—

MR. HAYDEN: I object to this testimony on the ground that it is incompetent, irrelevant and immaterial.

A. It was a bright light, sir.

Q. (Mr. Lawrence Bogle) Where was this bright light?

A. Oh, it seemed kind of high, to me; I could not make out what it was at first.

Q. What kind of a light was that?

A. Kind of a flickering light, unsteady light.

Q. Did it appear to be a stationary light?

A. It seemed to be moving, kind of like somebody waving with it, or flickering. I didn't know yet what it was before I came up closer, and I blew one whistle then and was answered with one whistle.

Q. At the time you saw this flickering light, how far were you from the "Strathalbyn"?

A. Oh, I don't know; about 600 feet, I guess.

Q. Did you make out the vessel?

A. I could see it looming up then, but I didn't know yet what kind of a vessel it was. I took it to be a mast-head light. I was looking to see if I could see any side lights, but when it loomed up and I blew one whistle I saw I could pass her on my port side and he answered with one and then I knew I was all right.

Q. What was the appearance of this vessel on the water, was it easy to pick her up, or hard?

MR. HAYDEN: I object to this as calling for a conclusion.

A. Oh, to pick her out?

Q. Yes.

A. Well, we came that close, it was easy to pick her out; it was about 150 feet off her course when we

passed her; I had to come that close; I would have went on shore if I came any closer.

Q. Was she lying pretty low in the water?

A. She was laying pretty low, sir; that is, her stern was sticking well up.

MR. HAYDEN: Let the witness testify and don't ask leading questions.

Q. (Mr. Lawrence Bogle) What was her appearance?

A. Well, she was lying low in the water, with her—foreward part of her was laying low. I could see a life-boat swung over the side.

CROSS EXAMINATION.

Q. (Mr. Hayden) You say you saw the loom of her hull about at least 600 feet away from her?

A. Oh, yes, about that, I guess.

Q. Which way was the "Strathalbyn" headed at the time you saw her?

A. She was—well, we were steering at the time southeast by—southeast three quarter south and our course is south by west quarter west from Robinson to Dash Point.

Q. How is that?

A. South by west quarter west from Robinson to Dash, and I would think she was about—she must have headed about south or south by east, I guess.

Q. South or south—

A. (Interrupting) South by east; I didn't take any pains—

Q. (Interrupting) That is, the "Strathalbyn" was heading about south or south by east?

A. That is the way she appeared to me, yes.

Q. And you were heading how?

A. Well, we came around to south by west quarter west, but I had to hold her in more, I came in to about—been nearly up to southwest before I got clear of her. I would not clear her with that course we used to steer, I had to hold her in as much as possible to get clear by her. We could not get any closer in without running on the spit there. I believe it went up to southwest about.

Q. Did you pass between the "Strathalbyn" and the— A. (Interrupting) And the Point.

Q. And what point? A. Robinson Point.

Q. Between the "Strathalbyn" and Robinson Point?

A. Yes sir.

Q. How far were you off Robinson's Point when you passed the "Strathalbyn"?

A. Well, I don't know, an eighth of a mile, I guess.

Q. Oh, yes. The vessels were close over to Robinson Point, then, when you passed?

A. Very close. I would never dare to come that close any more, but it happened to be pretty high water. I was scared we would run on the spit there, but I could not do anything else; she had gone too far, I could not come around on the outside.

Q. Well, this light that you say you saw, you took that to be the masthead light?

A. When I first saw her, yes.

Q. Well, did you take it to be any other kind of a light afterwards?

A. Well, I blew one whistle—I saw I could get that light on my port bow and I blew one whistle and when he answered that one then I knew I was—

Q. (Interrupting) But you say when you first saw this light you took it to be the "Strathalbyn's" headlight? A. That is, I don't know—

Q. (Interrupting) Did you ever think it was anything else?

A. I did, it was something else; in fact I didn't know what it was first.

Q. You don't know what it is now, do you?

A. I know it now, because when I saw the boat I knew what it was; after we passed her, then I knew what it was.

Q. You say it was a bright light?

A. It was a bright light and it was kind of flickering, moving.

Q. You mean flickering—it was waving?

A. Waving, yes.

Q. It was not going up and down, the light was not? A. No, kind of this way (witness illustrating).

Q. But the light itself was not going up and down?

A. No.

Q. The light was steady?

A. Kind of a swinging light.

Q. Like a lantern swinging?

A. Yes, that is what it was.

Q. How much was that swinging, would you say?

A. Oh, I don't know, not very much; I don't remember it, in fact, how much it was, but I saw it was not steady. I said to the lookout too "I can't make out"—

Q. (Interrupting) I don't care what you said to the lookout. A. Oh.

Q. Now, you naturally would not see that light, because you were coming up astern of the vessel until you got abeam of her, would you?

A. I don't know. When I first saw it it was right ahead of me, this bright light.

Q. Yes, but I say—when you first saw the light it was right ahead of you?

A. Yes, and then I held her off a little, took it on my port bow.

Q. Yes. But you were coming from Seattle at that time? A. Yes sir.

Q. And as the "Strathalbyn" was headed southward—

A. (Interrupting) She was heading southward, yes.

Q. And you were headed southward—

A. (Interrupting) We were steering southeast three quarters south.

Q. Yes. So that you would be overtaking the "Strathalbyn" on her course?

A. Well, we would be overtaking her, of course.

Q. And of course you can't see the masthead light of a vessel except it is two points abaft the beam?

A. No sir, that is right.

Q. So that you would not see that masthead light until you got in a position where she would be two points abaft the beam at least?

A. That is right, sir; that is right.

Q. So that you might get pretty close to her with-

out seeing—while you were overtaking her, without seeing the masthead light.

MR. LAWRENCE BOGLE: I object to the form of it. You can ask him whether he did see it or not.

MR. HAYDEN: He said he saw it.

A. I saw that bright light, yes, over the stern—that waving light.

Q. (Mr. Hayden) You saw that over the stern?

A. Well, it was—I didn't know it was over the stern before I came closer up.

Q. But the light that you saw that was waving was over her stern?

A. Well, it was on the after part of the ship. I don't know exactly where it came from, but that was the first thing I saw.

Q. You passed then on the starboard side of the "Strathalbn"? A. (Interrupting) Yes sir.

Q. (Continuing) —going by. That is all you know about that vessel, is it? A. Yes sir.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) When you saw this flickering light, was it above—

MR. HAYDEN: (Interrupting) Excuse me a moment. He said it was a waving light, he said the light itself was steady.

MR. LAWRENCE BOGLE: I don't think that makes any difference.

Q. (Mr. Lawrence Bogle) This light that you saw, was it above you or below the horizontal line of where you were standing? A. It was above, it looked high to me.

Q. Above where you were standing?

A. Yes, it looked higher than where I was standing, when I first saw it; that is the reason I took it to be some boat's masthead light—it looked so high.

Q. And afterwards you passed on the starboard side of her?

A. On the starboard side we passed, yes, of her.

Q. Did you afterwards see her masthead light?

A. I saw it and the green light.

Q. How was the appearance of this masthead light?

A. It looked kind of dim, nearly out, the way it looked to me; but the green looked pretty bright.

Q. The masthead light was dim?

A. Dim, yes sir; in fact it looked like it was nearly out.

Q. Were you ever in a position where you were directly ahead of this vessel or within a point and a half or two points off her bow? A. No sir.

RECROSS EXAMINATION.

Q. (Mr. Hayden) Now, when you speak about the masthead light, what light do you mean by that, Mr. Wick? A. About the masthead light, sir?

Q. Yes. A. I mean a bright light.

Q. Well, what light do you mean by that? I don't quite understand. Do you mean the light that is most far forward on the vessel?

A. Yes, the light up on the mast.

Q. Yes. I want you to tell me how many lights did you see burning on this vessel that night?

A. I saw this light I spoke about first, this flickering light, and I saw the green light and the masthead light as we came up.

Q. You saw three lights then?

A. Well, after we got by her.

Q. Well, now, what light do you call the second white light that you say you saw or just mentioned?

A. Well, I believe it looked like a light showing out through a port hole in some room or something.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) How close did you say you passed to this vessel?

A. I don't know, between a hundred and two hundred feet, I guess.

Q. It was at that time that you saw the masthead light?

A. When we came by her, yes. Of course we were holding away from her as we passed by her—holding away from her all the time.

(Witness excused.)

EARNEST HUGH PHILLIPS, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn

by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State you full name, Mr. Phillips?

A. Earnest Hugh Phillips.

Q. What is your business?

A. Quartermaster on the "Indianapolis".

Q. How long have you been quartermaster on the "Indianapolis"? A. About sixteen months.

Q. Were you quartermaster on the "Indianapolis" on the night of January 12th, 1912? A. Yes sir.

Q. The night of the collision between the "Strathalbyn" and the "Virginian"? A. Yes sir.

Q. The "Indianapolis" was on the run between here and Tacoma? A. Yes sir.

Q. Where did you pass the "Strathalbyn" the first time on this night?

A. Why, about—well, the other side of Brown's Point or nearly abeam of it.

Q. Nearly abeam of Brown's Point? A. Yes.

Q. About what time was that?

A. Well, let's see—let's see, that is I think along 6:29, 6:30, about that time.

Q. You were headed for Tacoma?

A. For Tacoma, yes.

Q. Which way was the "Strathalbyn" coming?

A. Well, she was swinging towards Robinson's Point.

Q. She was swinging off Brown's for Robinson?

A. Coming around Brown.

Q. What lights did you see on the "Strathalbyn", if any, at that time?

A. Well, the masthead light and the green sidelight and two lights in her chart room—chart house.

Q. When did you first see her masthead light?

A. When Captain Canfield called my attention to it; she was about—I should say about an eighth of a mile or so away.

Q. When did you first see her green light?

A. Well, I guess about a minute or so after that.

Q. A minute or so. About how far away was she at the time?

A. Well, I don't know, a little less than an eighth of a mile; she hadn't come much closer then.

Q. What was the bearing of this green light when you first saw it?

MR. HAYDEN: I object to this as all immaterial.

A. Well, about four points off our bow.

Q. (Mr. Lawrence Bogle) Which bow.

A. The starboard bow.

Q. What was the appearance of that green light, Mr. Phillips?

MR. HAYDEN: I object to that as immaterial.

A. The appearance?

Q. (Mr. Lawrence Bogle) Yes, was it a bright light or a dim light?

A. Oh, it didn't appear—it appeared dim, because I had to look at it through the glasses; I didn't see it with the naked eye at any time.

Q. You didn't see it at any time with the naked eye? A. No sir.

Q. About how close did you pass the "Strathalbyn"? A. At the nearest point?

Q. Yes, when you passed abeam of her?

A. Well, we wasn't much closer than an eighth of a mile, we hadn't come any closer; that was about as close as I saw her.

Q. You could not see the green light at that distance with the naked eye? A. No sir.

MR. HAYDEN: That I object to and move to strike it out.

Q. (Mr. Lawrence Bogle) Mr. Phillips, after the captain had called your attention to the masthead light, were you looking for the side lights after that?

MR. HAYDEN: Objected to as leading.

A. I always do that—look for the side lights when I see a vessel.

Q. (Mr. Lawrence Bogle) As I understand it, you could not make them out.

MR. HAYDEN: I object to that as leading.

A. No sir.

Q. (Mr. Lawrence Bogle) What was the appearance of this masthead light, Mr. Phillips?

A. Well, that was not a bright light; about like

some of these boats around here, they don't carry very bright lights.

Q. Would you say that was a bright or a dim light?

MR. HAYDEN: I object to that as leading and suggestive.

A. Well, it was not exactly dim; it was not bright either.

Q. (Mr. Lawrence Bogle) When you saw this light was it coming toward you or moving across your course? A. Across the course.

Q. Were there any lights in the background of Tacoma, stationary lights across which this light was moving?

A. Well, there was lights around Old Town, in that direction, about across or back of her masthead light, at the time that I saw it.

Q. They would be moving across that light, would they? A. Yes.

Q. Those were the only lights you saw passing her at Tacoma? A. Yes sir, the only ships lights.

Q. Did you pass the "Strathalbyn" again on this night? A. Yes, about a mile north of Robinson Point.

Q. About what time was that?

A. Well, I should say about 7:45 or six, about five or six minutes this side of Robinson Point. We generally always get there at 7:40 on our schedule.

Q. Were you meeting at this time or passing her?

A. Overtaking her.

Q. You were overtaking the "Strathalbyn"?

A. Yes sir.

Q. What attracted your attention to the "Strathalbyn"?

MR. HAYDEN: I object to that as immaterial.

A. Well, Captain Penfield called my attention to it. He saw her first. He thought it was a sail. I didn't see any lights.

Q. What do you mean by that?

A. Well, a sailing vessel don't carry any bright light astern; the vessel overtaking, they flash her stern light.

Q. This vessel had no stern light then?

A. No sir, no light.

Q. How close were you to this vessel, the "Strathalbyn," before you made her out?

A. I was pretty close, I would not say how close; I would not say more than a couple of ship lengths.

Q. Which side did you pass her on?

A. Starboard side.

Q. Did you see any other light in passing her?

A. Well, I saw those two lights again out of her chart house when the green light opened up.

Q. Where were you when you saw these two lights out of the chart house?

A. Well, we were about abeam of her then. Saw the green light first.

Q. How far off were you when you saw that green light?

A. Well, about between 150 and—I should say between 150 and 250 yards.

Q. What was the appearance of that green light?

A. Appeared bright.

Q. Brighter than when you passed her at Robinson's?

MR. HAYDEN: I object to that as leading and suggestive.

A. At Brown's?

Q. (Mr. Lawrence Bogle) At Brown's, yes.

A. Yes, it was better than when we passed her at Brown's Point. I saw it at a different angle.

Q. What do you mean by that?

A. Well, we were coming up astern of her this time, and the other time she was crossing our bow or a little bit off the starboard bow.

Q. Did you watch this light as you passed the "Strathalbyn"?

A. I watched it until we got abeam—a little bit abaft the beam, began to close out and I didn't watch it any more.

Q. You say it began to close out?

A. Yes sir, get dim.

Q. About what was the bearing of that light when it started to close out and get dim?

A. Well, I should say about a point abaft our beam —two points abaft the beam.

Q. Two points abaft of your beam?

A. Of our beam, yes sir.

Q. Did you see the masthead light at this time?

A. No sir, I never took any notice of her masthead light, that I remember now.

Q. Did you watch these lights after you got any considerable distance ahead of her, did you look back?

A. No, she was—until she bore to two points abaft her beam; I don't know just how far ahead of her we were then.

Q. Did you take any further notice or look back after that?

A. Why, I looked back after we had got down towards Three Tree Point, I looked back a few times. Captain Penfield was looking back all the time.

Q. Why were you looking back, Mr. Phillips?

MR. HAYDEN: I object to that as leading and immaterial.

A. He had been talking about her lights being deceiving, that some ship was liable to butt into her.

MR. HAYDEN: I move to strike that out as hearsay and immaterial.

Q. (Mr. Lawrence Bogle) Did you see any other vessel? A. See any other vessel?

Q. Yes, approaching?

A. Well, saw two vessels approaching. One of them I took to be the "Flyer" and another one the American-Hawaiian line, I don't know what one.

Q. Where were those vessels?

A. They were off her port side. We seen them as soon as we got around Robinson Point.

Q. About where did you pass those two vessels?

A. Oh, about three quarters of a mile south of Three Tree, where we usually pass the "Flyer".

Q. What was your course after pasisng Three Tree?

A. Did you say where we usually meet the "Flyer"? (Last question read.)

A. After passing Three Tree? Well, it was northwest three eighths north as we steered there for three or four minutes. Regular course was northwest three quarters north.

Q. You didn't steer your regular course on this night? A. Well, it ran by the course.

Q. Why did you do that?

A. Well, he was watching the ship. He says "There is liable to be a mixup" and he didn't want to shut their lights out.

MR. HAYDEN: I move to strike out that, that he thought there would be a mixup.

Q. (Mr. Lawrence Bogle) What was the appearance of this vessel on the water as you passed her at Robinson Point or off Robinson Point—north of Robinson Point?

A. Well, I don't know just how you mean. Do you mean whether we could see her very well?

Q. Yes.

A. No, not until we came up pretty close to her, we couldn't make out her hull until we got up close; there was no lights burning and it was a dark night.

Q. What kind of a night was it?

A. Clear dark night.

Q. A clear dark night?

A. Up to that time. I think there was a little drizzling rain after we left Seattle.

Q. Was it hard to see objects on the water?

A. Without lights, yes sir.

Q. In your opinion, did this vessel present a deceiving appearance?

MR. HAYDEN: I object to that as leading and suggestive.

A. Yes sir.

MR. HAYDEN: And calling for a conclusion, and indefinite.

Q. (Mr. Lawrence Bogle) Did you anticipate that there would be any trouble there?

MR. HAYDEN: I object to that as immaterial.

A. Well, I did, but I didn't say anything about it. I was going to say something about I thought the "Strathalbyn" should—

MR. HAYDEN: (Interrupting) I object to that as immaterial.

A. I was going to say that I should think that the pilot on the "Strathalbyn"—I didn't know that it

was the "Strathalbyn" then, but that ship—ought to port and get clear of the other two. Captain Penfield was busy watching them, so I didn't want to interfere.

Q. Have you ever been on a vessel where they used the oil lights? A. Yes sir.

Q. Were these lights on the "Strathalbyn" as bright as the ordinary oil light?

MR. HAYDEN: I object to that on the ground that he has not shown he is qualified to testify as to other oil lights.

Q. (Mr. Lawrence Bogle) I will ask you if the lights on the "Strathalbyn" were as bright as the ordinary oil lights upon the vessels upon which you have worked which carried oil lights?

MR. HAYDEN: Same objection.

A. No sir, except when they were abeam.

Q. (Mr. Hayden) Except what?

A. When they were abeam, we could see them abeam or abaft the beam.

Q. (Mr. Lawrence Bogle) Meeting the "Strathalbyn" off of Brown's Point, had your lookout reported any lights prior to the time the captain called your attention to this? A. Well, I don't know—

MR. HAYDEN: (Interrupting) I object to that as hearsay.

A. I don't know. I didn't hear any report.

Q. (Mr. Lawrence Bogle) You didn't hear any report? A. No sir.

CROSS EXAMINATION.

Q. (Mr. Hayden) Mr. Phillips, what were you doing on the "Indianapolis" on this night?

A. Steering.

Q. You were at the wheel? A. Yes sir.

Q. That occupies most of your attention, doesn't it, when you are at the wheel?

A. Well, not on that boat, not so much, because she steers steady.

Q. And you had plenty of time, then, you mean, to look around and pay attention to other things that are going on?

A. While we are on a straight course and are not

near the points, she goes quite a while, three or four minutes at a time.

Q. When you first saw the "Strathalbyn" you were between Dash Point and Brown's Point?

A. Yes, between the two points, close to Brown.

Q. You were getting in close to shore then, weren't you? A. Yes sir.

Q. That would be a time when you were required to pay more attention than almost any other place along the line, wouldn't it? A. Yes sir.

Q. And you were paying attention to your steering, I suppose, at that time?

A. Well, I was looking ahead.

Q. Yes.

A. Was steadying her up on a light ashore and kept her there—

Q. I suppose that is the reason you didn't see the vessel at the same time Captain Penfield saw her, and that he called your attention to it because you were paying attention to your steering, isn't it?

MR. LAWRENCE BOGLE: I object to the form of that question.

A. He called my attention to it all right, yes sir.

Q. (Mr. Hayden) You didn't see it until he called your attention to it? A. No sir.

Q. And when he says he saw her over a mile there, she must have been coming quite a little while before he called your attention to it?

MR. LAWRENCE BOGLE: We object to that.

A. I don't know.

MR. LAWRENCE BOGLE: The witness does not know what Captain Penfield testified to.

MR. HAYDEN: I am telling him.

MR. LAWRENCE BOGLE: Well, you are not telling him correctly.

MR. HAYDEN: Well, I will take your challenge on that.

MR. LAWRENCE BOGLE: You are examining this witness, go ahead and examine him.

MR. HAYDEN: Wait a minute, let's see whether I am telling him incorrectly.

MR. LAWRENCE BOGLE: You told him what

Captain Penfield's testimony will show, and we object to that testimony now at this time and at this place. If you are examining this witness, examine him upon his own knowledge and not upon what Captain Penfield testified to.

MR. HAYDEN: That is what I have been trying to do all the time.

MR. LAWRENCE BOGLE: That is what you haven't been trying to do.

MR. HAYDEN: Trying to get you to do, Lawrence.

Q. (Mr. Hayden) All right, then. The first you knew about the "Strathalbyn" then being ahead of you was when Captain Penfield called your attention to it?

A. Yes sir.

Q. And at that time she was how many points off your bow? A. I should think about four.

Q. About four. And she was about an eighth of a mile away from you at that time, too?

A. Yes, about an eighth of a mile.

Q. And what course did you say you were steering at that time?

A. Well, I didn't say, but we were steering south by west half west.

Q. That is between Dash Point and—

A. (Interrupting) Between Dash Point and Brown's Point.

Q. Do you make any difference in your course between Robinson's Point and Dash Point?

A. Yes sir. Well, now, south by west, that is the course from Robinson's to Dash. South three quarters west from Dash to Brown's.

Q. So that you were steering a south three quarters west course when you first saw her? A. Yes.

Q. You blew a whistle to her, I suppose?

A. No sir.

Q. Did not give any whistles? A. No sir.

Q. Far enough away so that there was not any need of whistles?

A. Well, that is up to the judgment of the captain.

Q. You say you saw at that time the masthead light and the green light—

MR. LAWRENCE BOGLE: (Interrupting) At what time?

Q. (Continuing) —and two lights in the chart room?

A. I saw the masthead light and two lights in the chart room when he called my attention to her, but I didn't see the green light then.

Q. Oh, I see. Then you ran into Tacoma, I suppose? A. Yes.

Q. And came back again. The weather was clear, that is the air, atmosphere was clear all during that night until after you passed Pully Point on your way back to Seattle, wasn't it? A. Yes.

Q. You never were so that you had an opportunity to see the red light on the "Strathalbyn", were you?

A. No sir.

Q. What is the reason that you changed your course at Pully Point going north?

A. Pully Point? Why, he does that on account of foggy weather, he runs that course, and, as I understand, he follows that up until he gets about—

MR. LAWRENCE BOGLE: (Interrupting) I objeit to that unless the witness himself states the course or knows why it is such of his own personal knowledge.

MR. HAYDEN: I asked him why.

(Answer read.)

A. (Continuing) —until he gets a four or six-second echo.

Q. (Mr. Hayden) You mean by that he gets an echo that takes four or six seconds to come back to him off of the bank there after he blows his whistle?

A. Yes, when he hauls off a half a point.

Q. And about where does he catch that echo?

A. Well, according to the times; sometimes he gets it south of Brace Point and sometimes abeam of it.

Q. When you are on that course you can see Robinson's Point all the time, can't you?

A. Well, I never looked back to see the point.

Q. Never looked back to see whether you could or not. Why was the course you say you take from Pully Point in towards Brace Point?

A. Northwest three quarters north.

Q. (Mr. Lawrence Bogle) Where is Brace Point?

Q. (Mr. Hayden) Half way between Alki, isn't it, and Robinson, about?

A. No, half way between Alki and Pully.

Q. I mean Alki and Pully, yes. Now, you say the captain held off. Where does he change his course ordinarily at Pully Point going north?

A. As soon as the light is abeam.

Q. As soon as the light is abeam, and how long did he run before he changed his course on this evening after he passed Pully Point light abeam?

A. Oh, three or four minutes. That would be about three quarters of a mile, three quarters or a mile.

Q. You didn't look around?

A. I looked around, I said, but I didn't see the lights in a cluster; I looked around three or four times.

Q. Well, what lights did you see when you looked around?

A. I saw the range light of the "Flyer" and the stern light—some lights on the "Virginian".

Q. And what other lights?

A. I didn't notice any other lights.

Q. Didn't you see the "Strathalbyn's" headlight?

A. No sir.

Q. Didn't see that? A. No sir.

Q. You didn't notice it, you mean?

A. I didn't notice it.

MR. LAWRENCE BOGLE: He means he didn't see it—

A. (Interrupting) I didn't see it.

MR. LAWRENCE BOGLE: That is what he testified to.

Q. (Mr. Hayden) Now, did you see any other light on the "Strathalbyn" at that time—did you notice any other light on the "Strathalbyn" at that time?

A. No sir, all I saw was the "Flyer's" and "Virginian's" light.

Q. That is all you saw. Was the "Flyer" and the "Virginian" about in the line so that they might have obstructed the "Strathalbyn" from your course?

A. Oh, I don't know. I don't know where the

"Strathalbyn" was then; I could not say whether they were in line or not.

Q. Could you see Pully Point light when you looked around or did you see it?

A. No sir, because Pully Point light was on our starboard side and I was looking out on the port side.

Q. Did you see Robinson's Point light?

A. No sir. I was on the starboard side of the pilot house; Captain Penfield was over on the port side, and he had a view of it and I could only see—I could not quite see as many points abaft as he could.

Q. You didn't hear any whistles, I suppose, blown between the "Strathalbyn" and the "Flyer"?

A. There was one whistle blown. I don't know who blew that. I suppose it was the "Flyer", it sounded like her whistle.

Q. It sounded like the "Flyer's" whistle? A. Yes.

Q. You heard the "Flyer's" whistle then?

A. I suppose it was the "Flyer's" whistle.

Q. And you only heard one whistle?

A. One whistle, yes.

Q. That is all?

A. After we had passed them.

Q. Now, you said you saw a light at one time a little bit off the starboard bow; what light was that and when was that?

A. Well, I don't know what you mean now.

MR. LAWRENCE BOGLE: I don't remember that testimony.

Q. (Mr. Hayden) I say you said you saw a light of the "Strathalbyn" a little bit off the starboard bow. Where was that when you first saw it?

MR. LAWRENCE BOGLE: I don't remember that testimony.

A. Her bright light.

MR. LAWRENCE BOGLE: Ask him if he did testify to that.

MR. HAYDEN: I won't ask him; that is what he said.

A. I saw the "Strathalbyn's" light at Brown's Point the first time I saw it.

Q. (Mr. Hayden) You said you saw it a little bit

off the starboard bow when you first saw it. Do you remember where that was?

MR. LAWRENCE BOGLE: We object to that.

A. Her masthead light, yes, and those two lights in the cabin; that is when I said she was about four points off the bow.

Q. That is what you meant by a little bit, is four points? A. Well, three or four points, yes sir.

Q. Was that what you mean by a little bit? I just want to get the record straight, Mr. Phillips, that is all.

MR. LAWRENCE BOGLE: I object to the question. I don't think he testified to that.

Q. (Mr. Hayden) All we want is the truth here, Mr. Phillips, and it is all I want?

A. Well, that is all I intend to give.

Q. Yes, that is all I expect you to give, and I am not trying to catch you or trip you in any way. I just want to know what you mean by it.

A. Well, I could hardly call that a little bit.

Q. Well, I want to know what you mean by a little bit then, just give me the truth of it exactly as it was.

MR. LAWRENCE BOGLE: Ask him if he did testify tothat. I don't think he did.

A. Well, about three points. Say that is about three points off the starboard bow.

Q. (Mr. Hayden) That is what you mean when you say a little bit off the starboard bow?

A. Well, I would not call that a little bit. I should not think more than a point or two points would be a little bit.

Q. How fast does the "Indianapolis" travel?

A. The "Indianapolis" makes about a knot in four minutes; fifteen knots an hour.

Q. What time on this night did you pass Pully Point or have Pully Point abeam?

A. At what time?

Q. Yes? A. What trip?

Q. Well, on the trip—

A. (Interrupting) Going to Seattle, the last trip?

Q. The last trip out, yes.

A. Oh, I don't know just what time.

Q. You don't remember that?

A. I should say about—

Q. (Interrupting) Do you remember, Mr. Phillips?

A. Oh, I didn't look at the clock, no sir.

Q. I only wanted it if you remembered. Did you look at the clock when you passed Robinson's Point going back?

A. Well, I generally always look at it when I got around the Point.

Q. But do you remember what it was now?

A. No sir, I don't know the exact time. I should say 7:40, because I know when we leave on time we make it at 7:40.

Q. Yes, that is your ordinary way of going?

A. Yes.

Q. About the ordinary way.

A. We generally always go—

Q. (Interrupting) How long does it take you to run between Robinson's Point and Pully Point?

A. Oh, sixteen minutes, anywheres from fifteen to seventeen minutes, according to the tide.

Q. What course do you take ordinarily from Robinson's Point to Pully Point, going north?

A. At that time we used to steer northwest three-eighths north.

Q. At that time? A. Yes sir.

Q. Are you still on the boat? A. Yes sir.

Q. You make a difference—

A. (Interrupting) Well, different captains steer different courses, they don't all steer alike.

Q. At that time you steered what?

A. Northwest three eighths north.

Q. And what do you steer now?

A. Well, Captain Coffin steers northwest five eighths north sometimes, sometimes northwest a half north, according to the tide. He usually keeps in close to Pully Point.

Q. Captain Murray is on her now, isn't he?

A. No, Captain Coffin. Murray is on the "Chippewa".

Q. How long after you had passed the "Strathalbyn" was it before you came up to the "Flyer"—the time—do you remember?

A. Well, about—say about—run about two miles, about eight minutes.

Q. Run about how long?

A. About two miles, about eight minutes—seven or eight minutes.

Q. Are you quite sure that you did not pass the "Strathalbyn"—I mean the "Virginian" and the "Flyer", about abreast of Pully Point.

A. To the southard of Pully Point.

Q. Weren't you about abreast of it? A. No sir.

Q. What?

A. No sir. Good three minutes to the southard of Pully Point, very seldom ever been abeam of Pully—

Q. (Interrupting) If the "Flyer" had been a little delayed you would have been passing about abreast of Pully Point, if she had been three minutes delayed you would have been passing about there, wouldn't you?

A. Yes sir, if she had been three minutes late.

Q. Are you figuring here now where you passed her basing your recollection now upon where you usually pass her, or upon your recollection of it as you actually passed her that night?

A. According to where we actually passed her that night.

Q. That is what you mean now? A. Yes sir.

Q. After you passed the "Strathalbyn" to the north of Robinson's Point you did not look back at any time to see whether or not you could see her lights, did you?

A. Well, I looked back once, I think, out of the rear window.

Q. And that is the time that you saw the green light? A. The last time I saw her.

Q. Yes. A. Yes. Yes.

Q. The green light then you say was burning brighter than it appeared to be burning down off Brown's Point? A. No sir, I didn't say that.

Q. Didn't you say that it seemed to be burning brighter because you came onto it at a different angle?

A. No sir, I said that it appeared to be burning brighter when we got abeam of it.

Q. Off of Robinson's Point?

A. Off Robinson's Point, yes.

Q. Then it appeared to be burning when you passed her down near Brown's Point?

A. I said yes because I saw it at a different angle, but when I looked aft at one time it did not appear to be burning as bright as it did when we were abeam of it.

Q. And when you passed the "Strathalbyn" going north about Robinson's Point, what maneuvers did you make by going by her?

A. We ported our helm a half a point to clear her; that is the only maneuvers we made.

Q. Ported your helm a half a point? A. Yes.

Q. And went over on her starboard side then?

A. On her starboard side, yes.

Q. You were then coming up under her port quarter, would you be?

A. Well, I would not say her port quarter, no sir. About astern. She was crossing her bow.

Q. Had you taken your course for Pully Point from Robinson's Point before you got to the "Strathalbyn"? A. Yes.

Q. Your regular course?

A. Yes, quite a little before.

Q. Had gone on your regular course, had you?

A. Yes sir.

Q. And then she was holding off more to the westward of your regular course—the "Strathalbyn" was?

A. Yes sir.

Q. Probably making a wider swing around Pully Point?

A. I suppose she was probably making a wider swing around Pully.

Q. But your courses were practically parallel, weren't they? A. Yes.

Q. Then you must have come up—if she was making a wider swing, you must have come up then on her port quarter; is that right?

A. Well, when we first rounded the Point we probably were, but by the time we caught up to her we were almost directly astern of her.

Q. And then you ported your helm a quarter of a point? A. A half point.

Q. A half a point, and were off onto her starboard and passed her? A. Yes.

Q. At that time did you notice the "Flyer" making any maneuvers around the "Virginian"?

A. No sir.

Q. You did not notice the "Flyer" coming up under the port quarter of the "Virginian" and then swinging over and coming out on her starboard side?

A. No sir. I saw both the "Virginian" and the "Flyer's" lights.

Q. But you did not notice that maneuver?

A. No sir, no maneuver.

REDIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Didn't you testify that you passed the "Flyer" and the "Virginian" about three quarters of a mile south of Pully? A. Yes sir.

Q. What was the position of the two vessels at the time, was the "Virginian" between you and the "Flyer"? A. Yes sir.

Q. Were you paying any particular attention to their maneuvers?

A. Well, I looked at them because I thought maybe the "Flyer" was trying to race the "Virginian"; trying to see if she was gaining any. I know they are both fast boats.

Q. Just what did you testify as to the green light of the "Strathalbyn" when you passed her north of Robinson Point? I wish you would make that clear.

MR. HAYDEN: I think the record shows what he testified to. I have not any objection to his repeating it again, except that I want the same objection that I have had there, as immaterial.

MR. LAWRENCE BOGLE: You seemed to understand it a little bit different from what I did.

MR. HAYDEN: Well, the record will show.

A. Well, I saw her lights when they first opened up, I should say—I don't know exactly whether two points abaft her beam or not.

Q. (Mr. Lawrence Bogle) The lights—what lights do you mean? A. Her green light.

Q. Her green light?

A. Yes. Captain Penfield is the one that talked

about it first. He said "The carpenter must have touched up her lights".

MR. HAYDEN: Look here, Mr. Phillips, you haven't any right, in a lawsuit, to say what somebody else has been talking to you. I move to strike it out. You can remember that. Simply say what you know.

MR. LAWRENCE BOGLE: Let the witness testify.

MR. HAYDEN: I will just advise him, if you don't want to do it.

MR. LAWRENCE BOGLE: If it was necessary, I would.

Q. (Mr. Lawrence Bogle) Then you testify that it appeared a little brighter when you were abaft of the beam; is that it?

MR. HAYDEN: I object to that as leading and suggestive. He can tell what he saw.

MR. LAWRENCE BOGLE: Well, that is what I want him to do.

A. The lights appeared brighter abaft of the beam and abeam than they did the first time I ever saw it.

Q. (Mr. Lawrence Bogle) How did they appear as you proceeded to pass her?

MR. HAYDEN: I object to that as having been gone into.

A. After we passed him they began to get dim again.

Q. (Mr. Lawrence Bogle) Mr. Phillips, did you whistle to the "Strathalbyn" at the time you passed her north of Robinson?

MR. HAYDEN: I object as immaterial.

A. No sir.

Q. (Mr. Lawrence Bogle) Did she give you a whistle? A. No sir.

Q. Did you give her a whistle at the time of passing at Brown's? A. No sir.

MR. HAYDEN: Same objection.

Q. (Mr. Lawrence Bogle) Mr. Phillips, at the time you passed the "Strathalbyn" at Brown's Point, had you been looking for her lights before you saw them?

MR. HAYDEN: I object to that as immaterial.

A. I had been looking for ship's lights?

Q. Yes.

A. Oh, not specially, no sir. I was watching my course with a light ashore.

Q. You testified before the inspectors in this matter, didn't you? A. Yes sir.

Q. Do you remember at that time of a question being asked you by Captain Turner whether you had been looking for lights?

MR. HAYDEN: I object to the cross examining of your own witness.

Q. And you testified this way—

A. (Interrupting) Had I been looking for lights?

Q. Yes sir, that is, at Brown's Point.

A. I had been looking for them. I always look for lights, both lights and logs.

Q. You and the captain had both been looking for lights there at Brown's Point?

MR. HAYDEN: I object to that as leading.

A. I don't know about him, but I am always looking for lights when I am in the wheel house, always looking ahead, watching out for logs or piles.

(Witness excused.)

An adjournment was here taken until 3:30 o'clock this afternoon.

AFTERNOON'S PROCEEDINGS.

October 28, 1912.

PRESENT: Mr. W. H. Bogle and Mr. Lawrence Bogle of proctors for claimant, respondent and cross-libelant.

Mr. Hayden, proctor for libelant.

FRANK WALKER, produced as a witness on behalf of CLAIMANT, RESPONDENT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. W. H. Bogle) State your name, place of residence and business?

A. Frank Walker; Seattle; naval architect and consulting engineer.

Q. How long have you lived in Seattle?

A. Six years, in Seattle.

Q. How long have you followed the business of naval architect and consulting engineer?

A. In Seattle and Tacoma about fifteen or sixteen years.

Q. Were you called on, soon after the collision between the steamships "Virginian" and "Strathalbyn", to assist in taking measurements of the dimensions of the "Strathalbyn"? A. I was.

Q. By whom were you employed for that purpose?

A. By the firm of Bogle—

MR. W. H. BOGLE: You might put it by representatives of the "Virginian".

MR. HAYDEN: You might put it by the people —I don't think it makes any difference.

MR. W. H. BOGLE: No.

Q. (Mr. W. H. Bogle) Who else acted with you in making these surveys?

A. Captain William H. Logan and Mr. Jack the owner's representative.

Q. Was Mr. Jack the representative of the owners of the steamship "Strathalbyn"? A. Yes.

Q. What was the purpose in making these surveys?

MR. HAYDEN: I object to that as immaterial. I think you and I had better make a stipulation about that. We know more about it.

MR. W. H. BOGLE: Well, he can state, in a general way, what the purpose was.

A. I was asked to join with the others in taking measurements of the vessel, to determine her beam, height and center of her lights and light-screens.

Q. Had her cargo been discharged at the time these measurements were taken? A. Yes sir.

Q. Where was the vessel lying at the time?

A. She was lying in the drydock at Esquimalt, B. C.

Q. Could you locate the stanchions that had been used when the vessel was loaded with lumber?

A. The location of the stanchions were pointed out to us and some of the stanchions were laying on deck.

Q. By whom were the locations pointed out to you?

A. The chief officer of the ship.

Q. Did you and Mr. Jack and Captain Logan make measurements of the vessel? A. Yes sir.

Q. What arrangement, if any, was made for the preparation of tracings and obtaining blue prints of the vessel according to your measurements?

A. It was arranged between us that the draftsman of the B. C. Marine Railway Company should make the drawings from our notes and his own notes; that a tracing should be made and submitted to the three of us, to be checked up and signed, and blue prints made and distributed to the parties interested.

Q. Was the draftsman present at the time the three surveyors made the measurements? A. Yes sir.

Q. After your work was completed, then you undertook the work of having the drawings made, tracings prepared and the blue prints taken?

A. Mr. Jack was the—as he was located on the ground in Victoria, Mr. Jack and Captain Logan undertook to have the work done, and supervised the work of the draftsman, after Mr. Jack and I compared our notes.

Q. Did your notes and Mr. Jack's notes of the measurements correspond in all respects? A. Yes sir.

Q. Was there a tracing ever presented to you for your signature? A. No sir.

Q. Was any blue print taken from the tracing presented to you for your signature?

A. There was a tracing made and carefully gone into by Captain Logan and Mr. Jack—

Q. (Mr. Hayden, interrupting) Were you present?

A. I was not present.

Q. (Mr. Hayden) Were you present?

A. I was not present, no.

MR. HAYDEN: I move to strike out what took place between Captain Logan and Mr. Jack when this man was not present, or any reference to it in the testimony.

A. And Captain Logan personally brought a blue print from this tracing, signed by himself and by Mr. Jack, and then Captain Logan and myself again checked it up between us and decided it was correct, and then I signed the blue print.

Q. (Mr. W. H. Bogle) What became of that blue print?

A. Captain Logan after it was signed instructed me that he intended to take it back to Victoria and have the tracing completed, but in the meantime he was going to take that blue print over to Tacoma to Mr. Hayden, and at the same time Captain Logan agreed to supply me with my copies.

Q. Did you ever get your copies?

A. Never saw anything from that day to this.

Q. What efforts did you make to get your copies?

A. I made two visits to Victoria and called on Captain Logan, and he told me the blue prints were in course of preparation and that he would see I had them that afternoon before I left for Seattle. Then he called up the B. C. Marine Railway; their draftsman informed him that they were not yet dry, but they would be dry before I left. These blue prints never reached me. A week later I was in Victoria and down at the yard of the B. C. yard and asked for my blue prints, and they told me they knew nothing whatever about them, that Mr. Jack had taken everything away with him to New York, including the draftsman's notes and his own notes.

Q. Have you ever seen the tracing of the draftsman's notes or Mr. Jack's notes since that time?

A. Not to my knowledge. Captain Logan wrote me a letter on the subject.

Q. Have you that letter? A. Yes sir.

Q. Produce it.

A. (Witness produces letter). That is the only thing I have.

MR. W. H. BOGLE: I offer this letter in evidence.

MR. HAYDEN: I object to it as immaterial.

Letter referred to was marked claimant's exhibit "5-2", same being attached hereto and returned herewith.

Q. (Mr. W. H. Bogle) Mr. Walker, was the draftsman from the office of the British Columbia Marine Railway present on the ship at the time these measurements were taken by you and Captain Logan and Mr. Jack? A. Yes sir.

Q. Did he also take such notes as he would ordinarily need in preparing his draft for the tracings?

A. He took his own notes, followed up, and he also took measurements that we did not take, such as the sheer-line of the ship and the water-line of the vessel, which is on the drawing.

Q. You state that Captain Logan brought to you a blue print which had been previously signed by him and Mr. Jack? A. Yes sir.

Q. And which you inspected and compared with your notes? A. Yes sir.

Q. And which was then signed by you?

A. Yes sir.

Q. Did that blue print correctly show the measurements that had been taken and the distances between the lights on the ship? A. Yes sir.

Q. And that blue print, as I understand from you, was turned over by Captain Logan to Mr. Hayden, a representative or attorney for the "Strathalbyn"?

A. That is what I understand.

Q. Has that blue print been submitted to you for inspection by Mr. Hayden today? A. Yes sir.

Q. And it is present at this time, is it? A. Yes sir.

MR. W. H. BOGLE: We now ask Mr. Hayden to furnish us this blue print, for the purpose of having it introduced in evidence.

MR. HAYDEN: The blue print is on the table there and submitted to your inspection. I want to say this, in connection with the blue print, that I would prefer this not being introduced in evidence at this time. I have sometime before this furnished you with a copy of the blue print, with all the figures connected with the blue print. I would just as soon have it marked by the stenographer for identification, but I would like to send the blue print to Captain Jack, who is in New York, for his inspection in connection with the depositions that I want to take there, so that he can see the original blue print; and I suggest that you introduce the copy that I have furnished you of this blue print and mark the other for identification, to be referred to but not introduced in evidence yet, and Mr. Walker has already checked over the figures on the copy and told me they are all right.

There is nothing wrong with it, so that you have exactly the same thing for use in evidence. I would like to have that original deposition so that it may be referred to in connection with the deposition I wish to take of Captain Jack in connection with the issue here. The copy that you have only has some writing on it where I state that is furnished but call attention to an inaccuracy in it; and as soon as the original is returned after Mr. Jack's deposition we can substitute the original for the copy, if it is agreeable to you.

MR. W. H. BOGLE: With that understanding I will use the copy then, offer the copy in evidence at this time.

Blue print referred to was marked claimant's exhibit "5-3", same being attached hereto and returned herewith.

MR. W. H. BOGLE: Mr. Hayden, it is agreed, as I understand, that the writing on this copy of the blue print, which is addressed to Bogle, Graves, Merritt & Bogle, and signed, under date of September 12, 1912, by Huffer, Hayden & Hamilton, is writing that was put on this copy by you and is not a part of the original.

MR. HAYDEN: I put that writing on there in order to prevent the copy being circulated in any way as a correct drawing, according to my contention of the measurements between the lights.

Q. (Mr. W. H. Bogle) Is this copy, Mr. Walker, a correct copy of the original blue print which was signed by you and Mr. Jack and Captain Logan, with the exception of the letter written on this copy by Mr. Hayden? A. Apparently it is.

Q. Do you remember whether the horizontal measurements shown on the blue print signed by you, and on the copy which has been introduced in evidence, were on the original blue print when it was signed by you?

A. Which do you mean, judge—the horizontal measurement—you mean these measurements (indicating) or fore and aft measurements?

Q. Fore and aft measurements.

A. These measurements here (indicating)?

Q. Yes.

A. Did you ask me if they were on when I signed it?

Q. Yes. A. They were on this one, yes.

Q. On the original blue print when you signed it?

A. Yes.

Q. How long were you three engaged in taking these measurements on board the ship?

A. Oh, I could hardly say. It was done in one day, judge.

Q. Did you take any measurements that are not shown on the blue print?

A. Oh, yes, we took numerous measurements that are not shown on the blue print.

Q. In measuring the width between the lights on the vessel, from what points did you take these measurements?

A. We took them in a number of ways until we decided finally which way to take them, as that was the principal one we were asked to be correct on.

Q. How was the final measurement taken?

A. The final measurement was taken from the outside edge of the block to block on the light-screens—the outside edge of the blocks on the light-screens.

Q. Is that the forward end of the screen or the—

A. (Interrupting) The forward end.

Q. Where would that point be with reference to the center of the light?

A. That is supposed to be the center of the light.

Q. What distance did you find that to be?

A. As stated on the drawing, 46 feet 10.

Q. Is that distance as stated on the drawing the correct distance as found by you and these other gentlemen in your measurements at that time?

MR. HAYDEN: I object to that as not the best evidence.

A. We decided it was correct.

Q. (Mr. W. H. Bogle) What was the answer?

A. We decided that was the correct distance.

Q. Was the draftsman present at the time you decided to take the measurement from the outer edge of the forward block of the screens?

A. No sir. For that reason the draftsman left it

blank and it was put in in ink, and the measurements that are put in in ink on this drawing are the measurements taken by Mr. Jack, Captain Logan and myself. The other measurements, shown in white, are the draftsman's own measurements, the lettering and these measurements. All these are put in by Captain Logan and Mr. Jack. (Indicating) This measurement here (indicating), that measurement was put in by the draftsman.

Q. To say "that measurement" it don't mean anything in the record.

A. No. That was simply to get the outline of the ship. There is some erasure there, something has been written in. It is the same as this other one down here (indicating).

MR. HAYDEN: Lawrence, will you read this there? You can read it better than I can. I have been trying to make it out.

MR. LAWRENCE BOGLE: Let the witness read it, if he can.

MR. HAYDEN: Well, you have just read it.

MR. LAWRENCE BOGLE: I have read it for what I thought somebody interested had put in there; evidently has been put in and erased.

Q. (Mr. W. H. Bogle) Mr. Walker, the lines, letters and figures shown on this blue print in white were put there by the draftsman, were they? A. Yes sir.

Q. And the figures and letters written in in ink were put there by Mr. Jack and Captain Logan?

A. Yes sir.

Q. The line showing distance between lights, which contains in ink "46′ 10″", and in white letters the words "Between blocks on forward end of screens", represents the distance between the lights, does it?

A. Between the center of the lights.

Q. Now, where did the draftsman get his information as to the points between which that measurement was taken?

MR. HAYDEN: I object to that, if the man was not there, unless he was present and knows where the draftsman got it.

MR. W. H. BOGLE: Well, that is what I want to know.

A. He got it from—

Q. (Mr. Hayden, interrupting) Were you present when he got it?

A. No, I was not present when he got it.

MR. HAYDEN: All right. I object to the question as hearsay.

Q. (Mr. W. H. Bogle) Was the draftsman present at the time the measurement was taken?

A. No sir, he was not in attendance at the time it was taken, he was busy taking other measurements that were not material.

Q. Now, after you got through with your measurements, did you and Captain Logan and Mr. Jack compare your measurements to see whether they corresponded?

A. Mr. Jack and myself did. Captain Logan did not take notes.

Q. Did your comparisons show that your notes on the measurements corresponded? A. Yes sir.

Q. I understood you to say that it was arranged then between you and Logan and Jack that Jack would furnish the draftsman with the memoranda and notes that would enable him to make the drawing?

A. Yes sir.

Q. Did you ever furnish the draftsman with any memoranda of notes for that purpose?

A. Not personally, no.

Q. Does this drawing shown upon the blue print which has been introduced correctly show the distance between the center of the lights on the steamship "Strathalbyn"?

MR. HAYDEN: I object to that as calling for a conclusion.

A. Yes sir.

MR. HAYDEN: And not the best evidence.

Q. (Mr. W. H. Bogle) Mr. Walker, where were the stanchions located on the vessel with respect to the light?

MR. HAYDEN: What stanchions do you refer to, judge?

MR. W. H. BOGLE: The stanchions for holding the lumber when she was loaded.

A. You mean the cargo stanchions?

Q. (Mr. W. H. Bogle) Yes, the cargo stanchions?

A. The cargo—first cargo stanchions stood immediately abaft these bits.

Q. (Mr. Hayden) Of course you are testifying from where they were pointed out to you?

A. As pointed out by the chief officer. The stanchion on the port side was laying down in that position when I saw it (illustrating).

Q. (Mr. W. H. Bogle) You mean by "that position" lying down?

A. Laying across the deck. Asked "Where are the stanchions?" and the Captain said "That is the one that stood there." That stanchion was—I think it was a 6 by 10, about 20 feet long.

Q. When the vessel was loaded with cargo, were there stanchions extending along the entire deck on each side?

MR. HAYDEN: I object to that. I don't think he saw the vessel loaded. Unless he saw the vessel loaded, I don't think he can testify to that.

Q. (Mr. Hayden) Did you see the vessel loaded?

A. Not previous to the accident.

Q. (Mr. W. H. Bogle) Assuming that that vessel was loaded with lumber to a height of 14 to 15 feet on her deck, would it have been necessary to have placed stanchions along the sides of the deck to hold the lumber? A. Yes sir.

Q. That would be on the forward deck?

A. Yes sir.

Q. How far apart would those stanchions be located?

MR. HAYDEN: I object to that as not the best evidence, and surmise.

A. Oh, eight to ten feet apart; perhaps twelve.

Q. (Mr. W. H. Bogle) Mr. Walker, have you drawn another or prepared another blue print showing this deck of the "Strathalbyn" in accordance with the measurements taken at the time, and, if so, I will ask you to look at the print I now hand you and ask you if that is correct?

A. Yes sir, that is one prepared by me.

Q. Wherein does it differ from the blue print that was signed by you and the other surveyors?

A. Well, it differs in the measurements taken across the deck. These are as we took them (indicating) and these are as we took them (indicating), and those that were prepared by the surveyors were as the draftsman took them—these widths of these points—but it amounts to the same thing exactly; they are simply a measurement in a different position, and they are points of the curve just the same.

Q. It shows the same curve of the vessel?

A. Same curve of the vessel.

Q. Does the drawing which you have made show—

A. (Interrupting) For instance, the first one that the draftsman has is forty-eight foot seven; the first one we took was forty-eight seven and a half; then we went back twelve feet and we took forty-eight feet six; his gives forty-eight feet five and a half.

Q. Does the new plat which you have drawn show the location of the cargo stanchion immediately forward of the lights on the vessel? A. Yes.

Q. And does that correctly show the location of that stanchion?

A. As pointed out to me by the master and chief officer?

Q. Your blue print shows also the form of the light-screens? A. Yes sir.

Q. Is that a correct representation of the form of light-screen that is used and was used on the "Strathalbyn" at that time? A. Yes sir.

Q. Were those light-screens constructed in accordance with the navigation rule which reads as follows: "The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light so as to prevent these lights from being seen across the bow"? A. Yes sir.

Q. What was the distance from the light-screen to the first cargo stanchion forward? A. Well—

MR. HAYDEN: (Interrupting) Mr. Walker, you are referring to this map here. It has not been offered in evidence.

MR. W. H. BOGLE: I will offer it in evidence.

MR. HAYDEN: I don't think it is the best evidence. I would like to ask Mr. Walker a question or two. Have you identified that?

MR. W. H. BOGLE: No, I offer it in evidence now and ask the stenographer to identify it.

Q. (Mr. Hayden) What did you make those numbers on there from, Mr. Walker—distances?

A. From my notes.

Q. (Mr. Hayden) And have you your notes with you? A. No.

MR. HAYDEN: I object to the use of that as not the best evidence.

Q. (Mr. Hayden) The notes were made at the time, were they?

A. My notes were made at the time.

Q (Mr. Hayden) Where are your notes?

A. Well, I presume they are in the book that I made them in.

Q. (Mr. Hayden) Where is the book?

A. I don't know.

Q (Mr. Hayden) Have you lost the book?

A. No, I haven't lost the book.

Q. (Mr. Hayden) Could you get it?

A. I could get it—I think I could.

MR. HAYDEN: I demand to see the book that Mr. Walker has his notes in. I object to this map going in until I have had a chance to look at his notes, before he has got a right to testify to those distances taken from his notes.

THE WITNESS: My notes were made my own way and there is nobody else understands my notes but myself.

MR. HAYDEN: I presume that is right.

Q. (Mr. W. H. Bogle) Is this blue print which you present a correct representation of the deck of that vessel in so far as the distances between points and other measurements shown thereon are concerned?

A. Yes sir.

MR. W. H. BOGLE: I offer it in evidence.

MR. HAYDEN: Same objection.

Blue print referred to was marked claimant's ex-

hibit "5-4", same being attached hereto and returned herewith.

Q. (Mr. W. H. Bogle) Mr. Walker, what is the distance between the outer edge of the cargo stanchions immediately forward of the lights?

A. Both of these blue prints show that; it is forty-eight foot seven and a half.

Q. Your plat, exhibit "5-4", shows the same width that the other plat does? A. Yes.

Q. The one that was signed by you and Jack?

A. Yes.

Q. And how far forward of the screen-lights were those stanchions located?

MR. HAYDEN: The same objection to all this testimony, testifying on this looking at this blue print.

Q. (Continuing) —from the light—from the forward end of the screen?

A. Well, the blue print shows it just the same as our notes took it—eight foot three.

Q. That is the same distance shown on the other plat, is it? A. They show on both plats.

Q. I notice on exhibit "5-4" a line drawn from the center of the light along the outer edge of the forward stanchion and extending beyond the length of the ship —this line being drawn on both sides; what do those lines represent?

A. They indicate the line of light.

Q. The area between those lines would be obscured from these side lights, would it? A. Yes sir.

Q. At a distance of 400 feet beyond the bow of the ship, what would be the width of this dark area?

A. You say 400 feet, judge?

Q. Yes.

A. 240 feet. Just wait a minute before you put it in. It would be 60 feet in a hundred. Four times that would be 240 feet, approximately.

Q. Then at a distance of 800 feet forward of the vessel this dark area would cover 480 feet, would it?

A. Yes sir.

Q. Mr. Walker, look at your calculation again and see if you have not given the width of the dark area at

a point 400 feet forward of the light instead of 400 feet forward of the bow of the vessel?

A. I have given it 400 feet forward of the light. I have taken my first measurement 100 feet from the light.

Q. About how many points off the bow does that ray of light run?

MR. HAYDEN: I think that can be definitely calculated.

A. I might make a mistake on that, judge.

Q. On the blue print signed by yourself, Mr. Jack and Captain Logan, on the cross section in the column between the light-screen there seems to have been some pencil writing on there which has been erased; do you know what it is?

MR. HAYDEN: I wish you could send somebody down to Mr. Walker's office for that book. I want to insist on having it before I cross examine.

A. "46 feet 10" it says, but I can't make it out.

MR. HAYDEN: Maybe I can read it, judge.

MR. W. H. BOGLE: Forty-six ten feet from—

MR. HAYDEN: "46 feet 10 from between iron lamp holders."

Q. (Mr. W. H. Bogle) Was there any such notation on that blue print at the time you signed it?

A. There was no writing on there at all at the time I signed the blue print.

CROSS EXAMINATION.

Q. (Mr. Hayden) Now, captain, will you please go and get your book, and I will examine you after you get it. A. Not tonight.

MR. HAYDEN: Then I will postpone my examination, if it is agreeable to you gentlemen, until we get this book.

MR. W. H. BOGLE: All right.

Q. (Mr. Hayden) What is the reason you can't get it tonight?

A. Because I have got other business on and I don't intend to go and get it.

Q. Why didn't you bring it up?

A. Because I have no use for it and you have no use for it.

Q. I have a use for it and I insist on having it.

A. Well, if I can find it you can see it. I have used a number of note books since then. I am using notes every day.

MR. W. H. BOGLE: We want the production of Mr. Logan's and Mr. Jack's note books.

MR. HAYDEN: That is all right, I will have them produced. I haven't anything to keep back on this proposition at all.

MR. W. H. BOGLE: Neither have we.

MR. HAYDEN: No, you haven't.

MR. W. H. BOGLE: We would also like the production of the—

THE WITNESS: (Interrupting) My note book is my private note book, it does not interest you at all.

MR. HAYDEN: It does interest me, though. This is a matter of business here, judge. I don't want to postpone my cross examination.

MR. W. H. BOGLE: Well, Mr. Hayden—

MR. HAYDEN: (Interrupting) I want to have it right now, and Mr. Walker has submitted himself for cross examination this afternoon, and I think it is only right, as it is a matter of walking two or three blocks to get his note book, that he go down and get it.

MR. W. H. BOGLE: There was no notice or intimation, so far as I know, that this note book would be required on this examination, consequently Mr. Walker has not brought it with him. It is now nearly five o'clock.

THE WITNESS: I have several other note books in use at the present time.

MR. W. H. BOGLE: And we are perfectly willing to have the cross examination postponed, and Mr. Walker will look up his note book and have it present at such time as you may indicate that you want to go ahead with cross examination.

MR. HAYDEN: Well, we will cross examine tomorrow morning then.

THE WITNESS: Not tomorrow morning with me, sir.

MR. W. H. BOGLE: You will have to make some time that will accommodate the witness.

MR. HAYDEN: I will say this, that until today

I expected, after having submitted this blue print, that there would be no question of cross examining or no questioning about these measurements, and I didn't know before you started in that Mr. Walker was going to be examined today about these measurements, and of course I could not demand him to produce his notes until I knew that to be the fact.

MR. LAWRENCE BOGLE: And I would also like to state—

MR. HAYDEN: (Continuing) And I would like further to say that I told Mr. Walker, when he refused to show me his note book at a prior time, that at the time we took this testimony I would want his note book and intended to have that introduced in evidence—at the time we were first discussing this what I claim is an inaccuracy here in this drawing.

MR. LAWRENCE BOGLE: Well, I would like to state that I notified Mr. Hayden this morning that we will take Mr. Walker's testimony this afternoon.

MR. W. H. BOGLE: So far as the note book is concerned, if it can be found, and I have no doubt it can, Mr. Walker will produce it and counsel will have ample opportunity to cross examine him about it.

THE WITNESS: There is one thing I want to say to you—

MR. W. H. BOGLE: (Interrupting) In postponing the thing some consideration must be given to the convenience of the witness. If he has other engagements for tomorrow morning—

MR. HAYDEN: (Interrupting) I am willing to wait tonight.

MR. W. H. BOGLE: It will be necessary to set some other time to cross examine him, if you want that note book present.

THE WITNESS: There is one thing I want to say, judge, that I am not going to give up my note book. I keep my note books, they are valuable to me, and I am not going to give my note book up to go into this, to be hung around the court, and I can't take a copy of it. I can tear the pages out.

MR. W. H. BOGLE: If you produce it, the stenographer can make any copies from it that Mr. Hayden

wants; if you want to keep the original book, of course you have a right to do it.

THE WITNESS: I want to keep it.

MR. W. H. BOGLE: But Mr. Hayden can take any copy that he thinks has any bearing on the case. Now, when will you be at leisure for cross examination, Mr. Walker?

THE WITNESS: I could be at liberty tomorrow afternoon about 3:30 or 4 o'clock.

MR. W. H. BOGLE: How will that suit you, Mr. Hayden?

THE WITNESS: Tomorrow morning it is impossible with me.

MR. HAYDEN: What is the matter with this evening?

THE WITNESS: I have other business on this evening. I expected to be through by this time.

MR. HAYDEN: Can't you arrange your affairs so that you can have this tomorrow morning?

THE WITNESS: No sir, I cannot. I have got some business that I have agreed to attend to tomorrow morning, which means money to the people that I am engaged by.

By agreement, the original blue print signed by the three surveyors is marked claimant's identification "5-5".

An adjournment was here taken until three o'clock tomorrow afternoon.

Seattle, Wash., October 29, 1912.

Continuation of proceedings pursuant to adjournment.

FRANK WALKER resumed the stand.

Q. (Mr. Hayden) Let me see your book now, will you please, Mr. Walker?

A. (Witness produces book.)

Q. Do you remember the date that you made these measurements?

A. The date is on the page—I think it was February 19th, I believe—on the first page.

Q. (Showing book to witness) That was the date. And you said Captain Logan and Mr. Jack and yourself were present? A. Yes sir.

Q. Were any other people present when the surveys were being made?

A. There was quite a number of people around, quite an audience; there was yourself and Mr. Bogle and the captain of the ship and the mate of the ship and a half a dozen others.

Q. Do you know what mate?

A. Chief mate was present.

Q. By the captain of the ship you mean Captain Crerar. A. I dont' remember his name.

Q. It was the master of the "Strathalbyn", you mean?

A. Yes, the captain of the ship we are talking about.

Q. And do you remember at this time who were holding the tape, using the tape?

A. Captain Logan was holding one end of it and Mr. Jack and I think at times you held one end of the tape.

Q. Don't you remember Mr. Purdy, the first officer, holding the far off end of the tape?

A. Various people held it at times. Mr. Jack and I were always at the measuring end, though.

Q. Was not Mr. Purdy practically always at the end holding it on the mark?

A. No, Captain Logan was there quite a number of times. Owing to obstructions, the tape had to be passed backwards and forwards to different people.

Q. There were no obstructions across the bridge between the two lights, though?

A. No, nothing material.

Q. Do you remember how those light-screens were placed on the side of the ship?

A. I don't remember the detail of the fastenings. I know they were fastened outside of the bridge—outside of the bridge siding—the ends of the bridge, lower bridge.

Q. Were they fastened on anything peculiar?

A. I really don't remember the fastenings of them; the ordinary way, as far as I remember.

Q. You remember they were fastened on a swinging gate there?

A. I remember there was a gate in the woodwork of the bridge to get at the lights.

Q. Do you remember that in the light-screens—in each light-screen there was one iron bracket made for the lamps to fit upon?

A. That the lamps were hooked on, yes.

Q. Do you remember that there was a hole through the light screen and this bridge boarding that formed the bridge at the place where these iron brackets were?

A. They were forward of the iron brackets, yes.

Q. Do you remember that they were right at the iron brackets?

A. No, I remember they were forward.

Q. Don't you remember they were at the iron brackets, so as to leave room for the screw that held the lamp on the iron brackets to be screwed through?

A. They were very close to the iron brackets; I don't quite remember the location. It was a hand-hole anyway.

Q. Now, do you remember that in making the measurement across the bridge that there was a measurement made through these holes, hand-holes, off to the iron brackets?

A. I remember a great number of measurements taken across there.

Q. Was that one of them?

A. That was one of them, yes. It was not recorded.

Q. That is a measurement that you did not record, is it? A. I did not record it, nor the others.

Q. Do you remember of getting a measurement 47 feet 7?

A. I have a note of a measurement 47 feet 7 in my book.

Q. And was that measurement taken in connection with the light-screens?

A. That measurement was taken when we were attempting to find the center of the lights and there was a big discussion about the lamps being ashore in Tacoma and that measurement was then dropped.

Q. I don't quite understand that, Mr. Walker. You say you were attempting to get the center of the lights?

A. We were trying to locate the center of the

lights, when it was finally decided among the three of us that the blocks are always the center of the lights.

Q. But when you were trying to get the center of the lights, you took the measurement of 47 feet 7 as the center of the lights, did you? A. No.

Q. At that time, I say? A. No sir.

Q. Before you decided to drop it? A. No sir.

Q. Well, what was the 47 feet 7?

A. The 47 foot 7, I haven't quite a clear recollection of what it was. Apparently it is the outside of the light-screens.

Q. That is your best recollection at this time?

A. That is my best recollection at this time.

Q. Now, what is your best recollection at this time of this 46 foot 10?

A. As it is shown in my book, the center of the light; that is what we all finally agreed upon as the center of the light.

Q. That woodwork that was on the deck, Mr. Walker,—around the deck, rather, it was sort of a railing, wasn't it, on which the lights were fastened?

A. You mean the bridge?

Q. Yes.

A. The lights were screwed to the overhang of the bridge outside of the bridge bulwark or the bridge siding.

Q. Yes, they were secured to the bridge bulwark or sort of a fence built around the bridge.

A. You have it on one of these blue prints, I think it is on here. This shows where they were screwed. They were screwed to that part of the bridge, the outside corner of the bridge, just as it is shown there.

MR. LAWRENCE BOGLE: What exhibit is that? A. That is on the original blue print.

MR. HAYDEN: That is on the copy of the original blue print, exhibit "5-3".

Q. (Mr. Hayden) Mr. Walker, how did you make up the 46 feet 10, of what measurements?

A. The 46 foot 10 was made up by a direct measurement through the light-screens, adding the four and a half inches of the block.

Q. You didn't make the measurements separately?

A. We measured the block by my rule. I measured

the block and then we took the measurement between the —through the holes and between the face of the boards —light-screens.

Q. On the drawing here you give 46 foot 10. You didn't take 46 foot one and make a drawing to the inner edge of your light screen? A. No.

Q. And then add four and a half inches on each side of it?

A. No, we took it as one measurement.

Q. I notice in this book that 46 feet 10 is placed right under 47 feet 7 and that the measurement is shorter—the distance—diagram that you have got under there is shorter. Does that make it any clearer to your mind— A. (Interrupting) Let me look.

Q. (Continuing) —why you should have this 46 foot 10, a shorter measurement, where you say it comes to the center of the light, than you should make 47 feet 7 which you previously—you have now a recollection that you at one time thought was the center of the light?

A. I never said that, Mr. Hayden. Excuse me. We were trying to locate the center of the light when that 47-7 was taken.

Q. But I say then you put it down for some reason?

A. It has never been used, it has no bearing or meaning whatever. Those circles indicate the center of lights is 46-10, indicates the distance between them.

Q. Why did you leave 47-7?

A. Because there was no necessity of rubbing it out. It was simply a useless measurement.

Q. I see. But 47 feet 7 is just nine inches more than 46 feet 10, isn't it?

A. That is what it is, yes.

Q. And the light-screens—the block in the end of the light-screen is just four and a half inches on each light-screen; is that right?

A. That is right; the drawing shows it.

Q. So that if you should have taken 46 feet 10 as by any chance the inside of the light-box or light-screen, rather, and added your four inches and a half on each side of the ship, you would have got 47 feet 7 as the distance between the outside edge of the blocks of the light-screens; is that right?

A. I didn't quite follow that.

(Question read.)

A. If we had measured it that way, but we didn't measure it that way.

Q. I see. On the other page, the next page of this book we are referring to, in a circle you have the figures "48-8". Underneath those figures you have "47-7", under which a line is drawn and below a subtraction and you have one foot one. When did you put those figures down, Mr. Walker?

A. At the same time, but what they mean I have no recollection.

Q. I see.

A. There was some argument between Logan and Jack and myself.

Q. The question was, was it not, as to how much wider the rail of the ship was than the distance between the outer edges of the blocks of the light-screens?

A. I don't have any recollection of that, because there is no measurement on the ship that coincides with that at all.

Q. I see; but you were taking measurements of the ship at that time and would only put down some measurement on the ship that you actually took.

A. I don't know. We discussed other measurements besides that.

Q. But you only took measurements on the ship, you didn't put down—

A. (Interrupting) We were talking of molded breadth, I believe, if I recollect about that.

Q. The molded breadth?

A. The molded breadth of the vessel.

Q. What does that mean?

A. That means the measurement on the inside of the frames of the vessel at the widest part.

Q. That would not necessarily be on the deck at all, would it? A. No.

Q. As a matter of fact, it would be down in the hold?

A. I think the register book gives her a 48-8 molded breadth.

Q. That would be down below the deck?

A. That would be immediately under the deck-plating. That measurement was never taken—48-8 was never taken—simply discussed; but what it was I have no recollection at the present time.

Q. You have no recollection of why you subtracted 47 feet 7 from it, either, have you?

A. I have no recollection of that.

Q. You haven't any recollection of what the 47 feet 7 stood for, have you?

A. No clear recollection of that. That was not a decided measurement with us.

Q. I notice also in this book that you have a measurement across the ship 48 feet 7½ and that the "8" has been rubbed out and the "7½" written over it with a different pencil—heavier pencil?

A. No, that was made at the same time, Mr. Hayden, the same pencil pressed heavier; there has never been a mark made in the book since the day I made those marks.

Q. No, but you rubbed out the "8" for some reason?

A. Oh, maybe a drop of wet or something on it.

Q. You can see the "8".

A. There was an argument about a half an inch, between Logan, Jack and myself, in measuring across the ship; there was a little argument about half inches, and which I think you will find that on the blue print I conceded the half inch to them; you see they give 48 feet 7 and my measurement is 48-7½, you see. Got those measurements within a half an inch.

Q. A wave in the tape?

A. Which has to be in the tape, Mr. Hayden.

Q. On this exhibit "5-4" you have not tried to put down any figure for this 47 feet 7, have you?

A. No, there was no definite measurements taken, no bearing—

Q. (Interrupting) And you haven't got 47 feet 7 on these plans at all?

A. On neither of the blue prints are there 47 foot 7.

Q. So you didn't put it on this?

A. Because I had no occasion to.

Q. Did you prepare this blue print personally?

A. I did.

Q. Your own drawing, is it?

A. Well, my draftsman made it under my supervision. He is a man that never saw the ship.

Q. Now, I want to introduce these pages of this book, Mr. Walker. A. I could not spare that page.

Q. I want this—

A. (Interrupting) You can take a copy of it.

Q. (Continuing) —48 foot 7, I would like to have that.

MR. HAYDEN: Might get a copy in here, Mr. Bogle.

A. There is one page I will cut you out if you wish me to cut it out.

Q. Yes.

A. (Witness cuts out one sheet of book) I would just like to take that date myself, if you don't mind, will you please (witness writing). Now, this one, I would rather you would make a copy of that.

Q. I wonder if you can put that right on there, put this right on that page that you have cut out.

MR. LAWRENCE BOGLE: Better make a copy on another page.

THE WITNESS: Plenty of room for it.

MR. LAWRENCE BOGLE: I think you had better put it on another page.

MR. HAYDEN: What do you think about it?

MR. W. H. BOGLE: It don't make any difference.

MR. LAWRENCE BOGLE: The record might as well show it was on another page.

MR. HAYDEN: We will stipulate that the other was another page.

MR. LAWRENCE BOGLE: Make it on another piece of paper.

THE WITNESS: Do you want these other measurements too?

Q. (Mr. Hayden) Yes, please.

A. (Witness copying with pencil).

The two papers above referred to were offered in evidence and marked, respectively, libelant's exhibits "U-1" and "U-2", same being attached hereto and returned herewith.

Q. (Mr. Hayden) Now, Mr. Walker, referring to

exhibit entitled exhibit "U-1", that is a page taken out of your book containing the measurements that we have been just referring to in the testimony? A. Yes sir.

Q. One of the pages. And libelant's exhibit "U-2" is a copy of the second page that we have been referring to? A. Yes sir.

Q. Now, referring to libelant's exhibit "U-2", will you please indicate on that exhibit which line is the main deck of the vessel?

A. The base line, the lower line. It is marked, it shows deck—upper deck and bridge deck.

Q. Will you just write "Main deck" opposite there?

A. Then it won't be a copy of it.

Q. Well, just write "Main deck" on it. The record will show. A. (Witness writes "Main deck line.")

Q. Now, the circle on the right hand line—

A. (Interrupting) Isn't that the left hand line?

Q. The right hand line.

A. That is the left hand line. This is on the starboard side of the bridge.

Q. Well, I was referring to the right hand line of this exhibit, the right hand line where the measurements are in this exhibit. A. Yes.

Q. The circle indicates the port hole? A. Yes sir.

Q. The light in the—

A. (Interrupting) In the face of the bridge. It was to save me making another sketch. I didn't want to make a special sketch to put these heights down on, so I made that circle there.

Q. And that circle then is similar to the circle that I put a pencil cross across on claimant's exhibit "5-4".

A. Yes sir, indicates the top of that port hole.

Q. I don't notice, Mr. Walker, any measurement between the top of the port hole and the lower bridge deck. Have you got any?

A. You don't have to have that. You see here is—this gives it 15 foot 5 to the top of the deck, and deduct 14 from 15 five will give you one foot five inches.

Q. Fifteen feet five is the top of the lower deck?

A. No, of the bridge deck.

Q. Top of the nosing of the lower bridge deck?

A. Yes.

Q. From the lower bridge deck to this horseshoe looking mark—

A. (Interrupting) That is the nosing of the bulwark rail.

Q. (Continuing) —on libelant's exhibit "U-2"—

A. (Interrupting) That is the rail on the bridge.

Q. (Continuing) —is the rail on the bridge.

A. Yes.

Q. So that the height of the railing on the bridge is three feet three inches? A. Three feet three inches.

Q. And the total distance from the main deck to the lower part of the upper bridge deck is 23 feet and a half an inch? A. Yes sir.

Q. That is what you mean by that drawing?

A. That is what that indicates. Those were just heighth measurements.

Q. Referring now to this exhibit "U-1", will you explain, please, what these figures indicate following the left line, for instance, there is a star and then "6" and then a star and then "12" and a star and "12" and "18" and "15" and so forth?

A. It indicates the distance apart that the outline measurements of the deck were taken. The first one was taken six feet from the face of the break of the bridge, the next 12 feet from it, and 12 feet and so forth as shown.

Q. And at the point, the lower edge of the paper, there is sort of a triangle figure with 44 feet 2 in it.

A. It represents the width of the forecastle head.

Q. That is the width of the forecastle head at the break of the—

A. (Interrupting) At the break of the forecastle head.

Q. You mean by the "break of the forecastle head" where you first meet it, coming forward?

A. Where you first meet it, where it breaks off.

Q. As you are walking forward? A. Yes.

Q. And these figure sin the center of the ship "8-7½" "48-6" "48-2" and so forth, indicate what?

A. The inside of the rail, to get the form of the curve of the deck.

Q. Now, reversing, going to the other side of this

libelant's exhibit "U-1", the figures 47 feet 7 and 46 feet 10 are just what we have been explaining?

A. I have explained that.

Q. Yes. Coming down to the other figures, will you explain them, please?

A. 39 feet is the length of the forecastle head; 8 feet is the height of the forecastle head.

Q. At the break of the forecastle head?

A. At the break of the forecastle head.

Q. Yes.

A. And then this smaller measurement aft indicates the distance from the break of the bridge to the after side of the bits.

Q. That is 8 feet 3? A. Yes.

Q. And now what is—

A. (Interrupting) And then 17 feet one inch represents the height of the center of the light from the deck. You see a little round circle drawn to represent the center of the light.

Q. And what is the four feet two inches?

A. Four feet two represents the distance from the break of the bridge to the after end of the light-screen. This little mark here with the cross in it shows the aft end of the light screen.

Q. Four feet two. You haven't any measurements of the length of the light-screen, have you? A. No.

Q. You haven't any measurement—

A. (Interrupting) That gives you the measurements on the length of the light-screen.

Q. You haven't any measurements, have you, of the distance that the light-screen—the forward end of the blocks in the light-screens were back from the forward end or forward edge of the house?

A. Come practically close up to the edge of the bridge—the front edge of the bridge as shown.

Q. There was some distance in there, don't you remember, Mr.——

A. (Interrupting) We measured from the face of the bridge to the after part here; that was four feet two. The light-screens were regulation screens.

Q. I notice on this drawing of yours, libelant's "5-

4," that you have a star indicated by four and a half inches in the light-screen——

A. (Interrupting) Represents the center of the light.

Q. (Continuing) —that does not represent the block in the forward end of the light-screen?

A. Also represents the block on the forward end of the light screen.

Q. And you have set the block back considerably from the break of the house?

A. Well, I didn't set it back. I set the center of the light back where it belongs—where it was.

Q. No, you say this indicates the——

A. (Interrupting) That is the face of the block, and the straight line from it parallel with the center line of the vessel is the center of the light.

Q. The block I am talking about—you say this four and a half inches, it is marked here, represents the block?

A. No, that represents the distance from the inside of the screen to the center of the light, four and a half inches.

Q. Oh, I see. Well, where is the block on this?

A. Right there (indicating).

Q. Right there? A. Yes.

Q. We will mark a line out from it. Write "block" after it. (Writing.) A. Just as you please.

Q. This block is at the end of the light-screen, is that the way it was constructed? A. Yes, sir.

Q. Now, on claimant's exhibit "5-4" you have attempted or have you, followed these figures that you have just been testifying about on libelant's exhibit "U-1" and "U-2"?

A. I have followed the measurements as taken by us at the time.

Q. And as shown by those exhibits? A. Yes.

Q. I believe you said yetserday that the draftsman of the B. C. Marine Railway Company was not present at the time you were making the measurements of the distance between the light-screens?

A. To the best of my recollection he was not.

Q. He was on the dock or on the land there alongside of the dock with his transit, wasn't he?

A. He was taking other measurements that were not material, to get the outline of the vessel.

Q. Did Mr. Jack personally check over the original blue print of which claimant's exhibit "5-3" is a copy, with you personally?

A. Mr. Jack personally checked over his notes with me.

Q. Did he have his notes with him?

A. We checked them before we left the ship.

Q. Did you check them on the drawing with Mr. Jack?

A. I checked them on the drawing with Captain Logan.

Q. Not with Mr. Jack?

A. Not with Mr. Jack. At the time I checked them I asked him if he and Jack had checked them.

Q. You asked Mr. Logan?

A. I asked Logan if he and Jack had checked them and he was satisfied, and he said, "Yes, perfectly satisfied, and they are correct." Then I said, "For my notes they are practically correct, although I have a half an inch difference in the width of ship, with you people, but I will sign it because it is correct in the main."

Q. Then you and Captain Jack agreed upon your notes in Victoria before you left?

A. Before I left, yes.

Q. Do you remember the nature of the notes or the paper—what the notes were written on?

A. No, I don't. If I saw them again I could not swear to them.

Q. So that Mr. Logan brought this claimant's identification "5-5" to you?

A. He brought it to my office.

Q. Did he sign it in your office?

A. He had signed it previously. He and Jack had signed it previously; and I asked him at the time who put the ink measurements in, I said, "Why didn't the draftsman put them all in?" He said, "Jack and I put them in, to make sure of getting them right."

Q. That is what he said? A. Yes.

Q. "Jack and I put them in"? A. Yes.

Q. Both of them? A. Yes, between them.

Q. "They were put in between Jack and I"—what did he say?

A. Well, you clearly understand what I mean.

Q. I want to get just as near as I can what he said.

A. I can't repeat his words. He said, "We put those marks in—Jack and I."

Q. Have you got any record or recollection of when this claimant's identification 5-5 was signed by you?

A. No. I should say about a week after we took the measurements; perhaps four or five days after, I could not say; some little time after.

Q. There is something about this ship, Mr. Walker, that I do not see on any of these blue prints, except here possibly it is indicated. Aft of the bits there was a—will you describe or draw on this blue print to show how the rail came inboard aft of the bits? It don't seem to be on any of these drawings?

A. As far as I remember, it was the curve as shown there.

Q. Yes. Curved in to the house, didn't it?

A. Curved as all ships do, it would have a curve, and strain that is—the greater strain usually comes on a vessel here; that carries it up to the face of the superstructure.

Q. Now, looking aft along the rail, the appearance of the top of the rail where it is some few feet forward of the house, say on the starboard rail, would be the turn to the right, turn inboard?

A. No, that superstructure plating continues on past the bridge, you see, the top of the rail flanges upwards.

Q. And broadens out?

A. Well, no, it didn't broaden out, it remains the same. This is the inside of the rail here, this shows it here; that just comes up to the face—this curve comes up to the face of the superstructure.

Q. Don't you remember its broadening out?

A. No. There is a little tumble home of the superstructure; that is all you can see in that. The rail is

not inside of the superstructure, only level with the edge of it.

Q. That is what I mean (illustrating).

A. No, not that way. There is a bracket in that corner.

Q. As you are looking in here, comes up like that.

A. No, not the rail. There is a small bracket in there.

Q. I don't quite understand, captain, just what you mean by a bracket?

A. Well, when the rail goes up to the face of the superstructure, right in the corner is a small bracket, a strengthening piece, level with the top of this rail. The deck is the full width of the break of the bridge.

Q. From the break of the bridge forward, then, the distance between the inboard edges of the rails across the ship would not be less than 48 feet 7 inches?

A. You see it was the same measurement, the same width at this point as it was at that point (indicating); that is the reason we took her first measurement six feet from the break of the bridge. There is no falling in there at all. You are mistaken there.

Q. All right. The draftsman that made this claimant's identification "5-5" was not present in checking up the figures with you and Mr. Jack and Captain Logan, was he?

A. No. Just before we left the ship, Jack and I compared together and he read off his, he said, "What have you got at a certain place?" And I read off mine and we checked them over and were satisfied they were correct.

Q. Now, how many hours, Mr. Walker, do you figure it took to take those measurements?

A. Four or five hours.

Q. Let's see——

A. (Interrupting) You were present all the time.

Q. Yes. I want to get it into the record according to your notion about it.

A. We arrived at the ship somewhere about nine o'clock in the morning.

Q. Weren't we later than that, didn't we wait around quite a while?

A. Nine or half past nine, something like that, and we left the ship again one or two o'clock—two o'clock, I think it was, somewhere about then.

Q. We took lunch there, didn't we?

A. Were up town for lunch, I think.

Q. Went to the club? A. Went to the club, yes.

Q. So that the measurements were really taken—don't you remember we were pretty late in getting started, the people didn't get around and we probably got out there about eleven o'clock?

A. I could not say. I have not any recollection about the exact time. I should say we were four or five hours taking the measurements, which was ample.

Q. Oh, yes, I am not criticising the sufficiency of the time. I wanted to get what your recollection was about it. Now, Mr. Walker, in drawing these projecting lines of light rays that you speak of, you placed the stanchion how far forward—they don't seem to be marked on here—how far forward?

A. There is the front of the bridge, and the exact location as described to me by the captain and chief officer.

Q. But this 8 feet 3 runs up beyond where you have got your stanchion placed?

A. No, it runs up to the round on the top of the bits.

Q. And your stanchion is placed aft of the bits?

A. Yes, that is where the captain put his foot and said, "Here is where the foot of the stanchion was."

Q. Do you usually place stanchions on ships with the narrow side to the rail?

A. That is the idea, getting the strength of the stanchion.

Q. I see. You think that is the way they are usually placed, do you?

A. That is the way they are usually placed when they use a stanchion of that section.

Q. You did not see the way the stanchions were placed on this vessel?

A. No, I only saw the two or three stanchions that were pointed out to me on the deck.

Q. They were lying down? A. Lying down, yes.

Q. You figure the outside edge of the stanchion, in connection with this light illustration of yours, as being against and equal with the inside edge of the rail?

A. Yes, that is where the stanchion would be.

Q. I see. You did not make any allowance for any tumble home on those stanchions? A. No.

Q. In connection with the discussion that you have referred to, relative to the measurement of 47-7, do you remember anything being said at that time to this effect, that if we measured the distance between the light brackets, that is, those iron brackets that the lamps sat on, that as the lamps were in evidence in Tacoma that it would be a very easy matter to get the exact distance to the center line of the lights by adding to the measurement of the distance between the iron brackets the actual size of the lamp or the actual measurement of the distance from the outside of the lamp to the center of the wick?

A. I remember a great deal of discussion on that measurement, Mr. Hayden, and I also remember that in the midst of it Captain Logan said, "Why, what is the good of arguing about that when we have the exact center of the lights to go by? The outside face of the blocks will be the center of the lamps."

Q. You also remember the conversation I have suggested?

A. I remember a great deal about it, about measuring here and measuring there and adding this and subtracting the other, and the lamps were all the time in Tacoma and we forgot the lamps; we dismissed that from our minds, from the very fact that in all light-screens—regulation light-screens the blocks are placed there to indicate the center of the light.

Q. You remember of the remark being then made that the lamps were in Tacoma?

A. Yes, I asked for the lamps myself.

Q. Now, do you remember in that lot of conversation you have referred to a conversation of the substance that I have just suggested?

A. I don't remember any specific suggestions of that kind. There were a great many suggestions made before we finally adopted one principle.

Q. Don't you think, Mr. Walker, that you put that 46 foot 10 down, and also put 47 foot 7 down, 47 foot 7 being the distance between the outer edges of the blocks, in order that you might check up——

A. (Interrupting) No, sir.

Q. (Continuing) —in order that there might be checked up the position of the center of the light when you added the distance from the outer edge of the light to the center of the wick to the distance that was measured between the iron brackets of 46 feet 10?

A. No, sir, the iron brackets were dismissed entirely.

Q. That is your recollection of it now? A. Yes.

Q. How much time did you take going over this libelant's exhibit "5-5" before you signed your name to it, with Captain Logan?

A. I took sufficient time to check over every measurement with Captain Logan, that was down on the blue print and in my note book.

Q. You and Captain Logan did not attempt to erase?

A. We never made any mark on it besides my signing my signature.

Q. You did not attempt to erase this writing up here that was read yesterday?

A. We erased nothing and there was no writing there at the time I signed that blue print.

RE-DIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Mr. Walker, I believe you stated that these measurements were made on February 19, 1912? A. Yes, sir.

Q. And this blue print was presented to you by Captain Logan and signed by you some five or six days thereafter?

A. I could not say exactly when. It was sometime after.

Q. When was the first time that you ever heard that there was any claim by anyone that there was any error or mistake in that blue print?

A. I think it was April 23rd. I made a note of it at the time. (Referring to book.)

Q. Who was it that made the claim at that time that there was an error? A. Mr. Hayden.

Q. And that was the first that you had ever heard that anyone claimed that an error or mistake appeared on the blue print, was it?

A. That was the first I ever heard about it, sir.

Q. That was long after the ship had left the Puget Sound waters, was it?

A. Long after the ship had gone.

Q. And long after the original tracing and memoranda and notes that Mr. Jack had furnished the draftsman had been taken by Mr. Jack back East?

A. Yes, sir, long after that.

Q. So long as the ship was here subject to measurement no claim was made, so far as you know, that there was any mistake in that original measurement or in the blue print? A. No, sir, no claim whatever.

Q. Mr. Walker, do you know when the ship left Puget Sound waters?

A. I don't. I have a note here that I visited her with Mr. Jack when she was laying in Tacoma on March 13th. I think that was a day or two before she sailed.

Q. Mr. Jack lives in New York, doesn't he?

A. I think he does, yes.

Q. And he was out here as the special representtive of the owners of that ship? A. Yes, sir.

Q. You have never been furnished by Mr. Jack with the original tracing, have you? A. No, sir.

Q. Or any of the memoranda or notes that were furnished to the draftsman to make the tracing?

A. No, sir.

Q. I understood you to say yesterday that Mr. Jack furnished the draftsman with the memoranda and notes?

A. Mr. Jack personally oversaw the making of the drawing.

Q. Calling your attention now to libelant's exhibit "U-1", being the leaf from your memorandum book containing your original notes, I notice that the line measured 46 feet 10 inches contains a round circle on each end, with an arrow to the center of that circle. What does that circle indicate?

A. That indicates the center of the light and was the final agreement between Mr. Jack and myself.

Q. You stated that the figures 47 feet 7 inches on that memoranda probably referred to a measurement of the distance between the outside edges of the screen?

A. I think it did, yes.

Q. That would be the outside edge of the rear end of the screen, would it? A. Yes, sir.

Q. The light was located in the center, as to width, of that screen? A. Yes, sir.

Q. And it would be four and a half inches from the inner side of the screen to the center of the light, and four and a half inches from the center of the light to the outside edge of the rear end of the screen?

MR. HAYDEN: I object to these questions as leading, and move to strike them out. This witness can testify without having the words put into his mouth by counsel.

Q. (Mr. W. H. Bogle) Is that correct, Mr. Walker?

A. That is to the best of my recollection; but the measurement taken, of 47-7, was not considered material and was dropped.

Q. Who was it, you say, that suggested that to get the measurement exact you could take the outer edge of the forward block of the screen as the center of the light? A. Captain Logan.

Q. Was that acquiesed in by you and Mr. Jack?

A. Yes, sir.

MR. HAYDEN: I object as leading.

Q. (Mr. W. H. Bogle) You have stated that there were a number of persons present at the time these measurements were taken. Who took notes of the measurements? A. Mr. Jack and myself.

Q. Did anyone else of the party take any notes?

A. Not to my knowledge.

Q. Were you and Mr. Jack together at the time each measurement was taken?

A. Yes, we were together right throughout.

Q. Did you each make your own notes at that time?

A. Yes, sir.

Q. Did Captain Logan take any notes of any of these measurements? A. No, sir, not at that time.

Q. Did Mr. Hayden?

A. Not to my knowledge. I was not interested in any of the notes the outsiders were taking.

Q. You were asked by Mr. Hayden if there was not some remark made to the effect that the lamps were in Tacoma and that their diameter could be ascertained for the purpose of getting the center of the flame. Were any steps ever taken to ascertain the diameter of those lamps before these blue prints were made?

A. Not to my knowledge.

Q. You were asked whether there was any or if you knew anything about the tumble home of the stanchions, or if you took that into consideration in drawing your line showing the ray of light. What would be the effect upon the stanchion of a load of lumber upon this forward deck to the height of 14 or 15 feet, as to whether it would tumble home or spread out?

MR. HAYDEN: I object to that as immaterial, as pure speculation. The witness has not seen the stanchions on the ship, the deck load on it.

A. I have supervised the loading of a great number of vessels with high deck cargoes, and the tendency is at all times to fall outwards; very hard to keep them inward.

Q. (Mr. W. H. Bogle) You are required in your business to make surveys of loaded vessels, are you?

A. I am, yes, sir.

Q. Have been doing that for a great many years?

A. I have surveyed a great number of lumber cargoes.

Q. You have stated that there were some measurements made that were not recorded?

A. A great number.

Q. Why were they not recorded?

A. They were useless.

Q. The real purpose of all these measurements was to get the exact distance between the center of these lights and the width forward between the outer edges of these stanchions, wasn't it?

MR. HAYDEN: I object to it as leading.

A. Yes, sir, that was the object of the work.

Q. (Mr. W. H. Bogle) Do you remember whether Mr. Lawrence Bogle was present——

A. (Interrupting) Yes, sir, he was present.

Q. (Continuing)—while these measurements were being taken? A. Yes, sir, he was present.

Q. Do you remember whether he insisted with the surveyors that the measurement of this distance between the center of the lights should be exact?

A. Yes, sir.

RE-CROSS-EXAMINATION.

Q. (Mr. Hayden) Mr. Walker, have you got a diagram anywhere of the light-screen, showing its measurements? A. No more than these blue prints.

Q. Did you take a drawing of it at any time?

A. The drawings are here.

Q. Did you make the measurements of the light-screen—the measurement of the size of the light-screen?

A. I took the necessary measurements of the light-screens.

Q. Did you make a measurement of the width of the light-screen at the rear end of it?

A. I can't say that I did.

Q. But you did make a very careful measurement of the width of the block and the light screen at the forward end of it?

A. Yes; we all made a very careful measurement of that and we all certified it correct right on that blue print, and the others certified it correct before I did.

Q. And you were very careful, I believe—Mr. Bogle instructed you to be very careful to get the exact center of the lamps?

A. That was Mr. Bogle's instructions to me.

Q. And naturally, without the lamps there, it would be very difficult to get the exact center of the flame of the lamps, wouldn't it?

A. Not at all. The blocks are the center.

Q. You assume that those blocks were right, the correct distance, when you say that, do you not?

A. We assume that they were—that was their measurement at the time I took them.

Q. I say, you assume, though, that those blocks would make the exact center of the lamp?

A. They are passed upon by the government inspectors on the vessel.

Q. And so you assume that they would be the exact center of the lamp?

A. We have to assume that is correct.

Q. Whereas, if you measured to the iron brackets in the light-screens and then measured with the exact lamp you would get the exact distance, would you not?

A. I don't know how the light-screens—how the lamps are hung on the bracket, because the brackets stuck out considerably from the screens.

Q. And however they were hung, the lamp itself would have to fit on them, wouldn't it?

A. I should think so.

Q. So that to get the exact distance between the center of the wick of the lamp, without assuming anything except absolute facts and distances as measured, you would get it by adding the exact measurement of the lamp and the exact measurement between——

A. (Interrupting) We are not talking about the width——

Q. (Interrupting) Wait a minute now. (Continuing ——and the exact measurement between the iron brackets in the lamp screen, wouldn't you?

A. The iron brackets would give us no certain measurement whatever, and we are not talking about the width of the lamp at all, we are talking about the center of the light.

Q. That is why the iron brackets would give you no exact measuremetn then?

A. Not at all unless we had the lamps to go by.

Q. That is what I say. The lamps are in court; they fit on the iron bracket, don't they?

A. Yes, I presume they do; I could not say; they may not fit; they may be slack.

Q. Now, Mr. Walker, isn't it a fact that in loading lumber cargoes with a high deck load of lumber, that for the purpose of preventing the lumber pushing the stanchions outboard when at sea, that the stanchions are usually given a tumble home when the lumber is first placed upon the deck?

A. The stanchions are set upright and they at-

tempt to keep them as near upright as they possibly can, to get as much lumber as they can on the ship's deck.

Q. You never have seen stanchions tumble home, have you? A. I can't say that I have.

Q. I suppose you have seen them with a tumble outboard a great many times, have you?

A. I have seen them many times with a tumble outboard.

Q. And never recollect of seeing them with a tumble home?

A. It is a very difficult matter to keep them upright, let alone a tumble home.

Q. You would be very much surprised if some one would come and testify in this case that they had a tumble home, would you?

A. I would not be surprised at anything.

Q. I see. I wouldn't either. Have you ever surveyed any ships loaded by the American Trading Company?

A. I can't say that I have. I don't know the people.

Q. What cargo ships carrying lumber—steamers carrying lumber out of Tacoma, with a big high deck load, have you surveyed in the last three years, say?

A. I could not give you the names of the vessels now.

Q. Have you surveyed any?

A. I can't say that I have surveyed any out of Tacoma.I have surveyed some at Port Blakely, I have surveyed some at Port Ludlow, some at Gamble, some at Bellingham.

Q. But you have not surveyed any out of Tacoma for how long?

A. Oh, I could not say. Five or six years, I think, since I surveyed a ship in Tacoma.

Q. Mr. Walker, what would be the possible explanation of your subtracting 47 feet 7 inches from 48 feet 8 inches if 47 feet 7 inches represented the distance between the back end of the screens?

A. I can't give you my exact explanation now, but I think it was to give the tumble home of the bridge; I

can't say; I don't recollect why that was made. It was not material at any time.

Q. Surely, to measure the back end of that screen would not be material at all, would it? A. Yes.

Q. In what way? A. It might be.

Q. Tell me how.

A. As it is usually a guard for the lamp and the lamp was inside of the back of the screen.

Q. Why would it be necessary to measure it?

A. In this case it was not. We took the front end of the screens.

Q. Why were you discussing the distance between the back end of the screen?

A. Oh, I don't know, just the silly discussions that arise on occasions like that. There are a great many foolish discussions over that business.

Q. There was not any discussion about these lights being turned around backward, was there?

A. I don't know what you mean.

Q. I say, the side lights, there was no discussion about the side lights being turned around backwards so that you would want to find out the way the rays would come aft of the ship or anything like that, was there, that would make this rear end of the screen material?

A. That just happens to be the case. The light is supposed to show about 15 degrees abaft the screen; that is what the aft end of the screen is on for.

Q. The aft end of the screen is so as to shut off the rays of light after they come around to a point abaft the beam, is that it?

A. The International Law was holding here.

Q. Is that it?

A. There is a little sketch here somewhere. That is what the law calls for. (Referring to blue print.)

Q. You have got that cut off by the shape of the light.

A. That is a sketch taken from the International Law book and not from this ship.

Q. Oh, I see.

A. This has nothing to do with this ship. This is simply to show what the law calls for it to be. This

represents the glass. Now, in some ships they run this screen up and cut it off. Depends on the formation of the lamp.

Q. What do you mean represents the glass?

A. Well, this is not the "Strathalbyn's" side screen at all, this is what the law calls for. This is a correct drawing of what it should be. This thick white line represents the glass.

Q. Now then the thick white line—this is on exhibit "5-4"—the white line you are referring to now is the one——

MR. BOGLE: (Interrupting) Mark "Center of flame."

A. That is what the regulations call for.

Q. (Mr. Hayden) The thick white line is the glass? A. Yes.

Q. And I draw a line out from that and mark "glass" (writing)—a thick white line; is that right? Draw out two lines and mark your "glass".

A. That is supposed to be. This has no bearing on this case beyond showing what the law calls for.

Q. And the 22 degrees and a half, according to the standard lights——

A. (Interrupting) Must not exceed that.

Q. (Continuing) —as it shines back or aft of the beam is cut off by the lamp itself, according to this standard? A. In some cases.

Q. According to this standard? A. Yes.

Q. You don't want to swear, do you, that I did not make any notes up there that day?

A. Oh, I would not swear to that, no.

Q. Did you find in your book the date that I called your attention to this discrepancy? A. The date?

Q. Or the mistake, as I call it?

A. I gave you the date once.

Q. Yes, you gave the 23rd of April.

A. April 23rd was the day that it was called to my attention in Mr. Lawrence Bogle's office, by you.

Q. You say it was called to your attention by me?

A. Yes.

Q. You and I and Mr. Bogle met in his office?

A. That was the first time I knew anything about it.

Q. Did Mr. Bogle tell you that I had telephoned over from Tacoma that I thought there was something wrong with the map? A. I can't recollect that.

Q. Or blue print. A. Mr. Bogle——

Q. (Interrupting) Do you recollect what Mr. Bogle said to you when he asked you to come up to the office? A. I do not.

Q. But when you came up to the office you had your book with the libelant's exhibits "U-1" and "U-2" with you, did you not? A. Just as it is now, yes.

Q. Do you remember why you brought that book with you?

A. I brought it at Mr. Bogle's request, I think, to check the measurement.

Q. How long before you came up to the office had Mr. Bogle spoken to you about coming up to the office and tried to make an appointment with you?

A. I could not say.

Q. You don't remember whether it was a few days or a few weeks?

A. I think it was the same morning.

Q. The same morning. You remember my asserting at that time, don't you, Mr. Walker, that the correct measurement of 46 feet 10 was the distance between the light brackets?

A. I remember you tried to make me believe that, yes.

MR. BOGLE: I object to it as incompetent and immaterial and an attempt by libelant to get in statements of Mr. Hayden as testimony in this case.

MR. HAYDEN: Mr. Hayden will testify.

MR. BOGLE: We will take it in the regular way, that is all; don't state it.

MR. HAYDEN: What I was trying to do was simply to show that at the time that Mr. Walker was called here the same contention was made by me as it is today.

MR. BOGLE: Well, that was shown by my questions to Mr. Walke, and that is the first time it is made; that is the only point of that date.

Q. (Mr. Hayden) Do you remember at that time I requested you to allow me to see your book from which

these exhibits "U-1" and "U-2" have come, and you refused to permit me to see it?

A. I remember you tried to look over my shoulder and over my notes, and I remember you demanded them and I refused to give them to you.

Q. And you remember you also refused at that time to make any explanation of that distance, 47 feet 7? A. I don't remember what took place.

Q. You remember at that time, too, Mr. Walker, I brought over this claimant's exhibit "5-5" and had it with me?

A. I remember you had a blue print with you.

Q. So that you could examine it and check it over, and I offered you the privilege of examining it and checking it over at the time?

A. I remember you had a blue print with you.

Q. You remember Mr. Bogle or yourself—Mr. Lawrence Bogle or yourself asking me to give you this exhibit "5-5"—a copy of it, and my saying at the time that I objected to doing so because it was inaccurate in my opinion, that I did not want the blue print to get out in circulation with its inaccuracies upon it.

A. I remember some conversation of that kind.

Q. Do you remember my saying that I had upon discovering the error, as I contended, in the print, that I had cabled to Captain Crerar asking him to give me the distance between the light brackets? A. I don't——

Q. And that I had a telegram, in answer, from Captain Crerar, with me——

A. (Interrupting) I don't remember.

Q. (Continuing) —which I showed at that time and which read that the distance was 46 feet 10 inches?

MR. BOGLE: We object to all of this as incompetent, immaterial and irrelevant, and manifestly an improper attempt to get hearsay and improper statements and testimony into the record.

A. I don't recollect the words of the conversation.

Q. (Mr. Hayden) Do you recollect my saying anything about having also communicated with Mr. Jack and Mr. Logan about it?

MR. BOGLE: The same objection.

MR. HAYDEN: You brought my name into this

matter, Mr. Bogle, as being of the notion that I had been trying to withhold this map and change it and have it changed and measurements changed after this ship had gone away. I want now all the facts in connection with this matter, since I think I have discovered the mistake in it, here before the court, as fully as it appears before us. I want the understanding of the people who were present at the time these different matters were taken up.

MR. BOGLE: We have no objection to your taking any testimony that you think is competent and taking it in a proper way by witnesses under oath, but we do object to endeavoring to get a lot of hearsay one-sided statements through cross-examination of this witness.

(Question read.)

A. I have no clear recollection, but I think something of that kind was mentioned.

Q. (Mr. Hayden) Do you recollect my saying that the reason I had called this matter to Mr. Bogle's attention and asked him to have you meet with me was to correct the error so that the map might be introduced in evidence, if it appeared to you that there was an error, to give you an opportunity to check over your notes again and refresh your recollection about it?

A. I recollect your suggesting that there was an error in it and that I could make the change, but I could not see why, as it was no error as far as we were concerned.

Q. That you thought you were right?

A. Sure we were right.

Q. Do you remember the matter being left open and I went away with the understanding that it would be taken up again, that it would be taken up between you and Mr. Jack and Mr. Logan, let it stand that way?

A. I don't recollect.

D. Did you subsequent to that time receive any letters from Mr. Jack about the matter?

A. I did receive a letter from Mr. Jack on the subject.

Q. Did you reply to him? A. I think I did.

Q. Did Mr. Logan see you subsequently to that time? A. Yes.

Q. About these measurements?

A. We never discussed it.

Q. Did he see you about the measurements?

A. He saw me and stated that there was some—that he had heard there was some mistake in it. I said there was no mistake in it as far as I was concerned, and we dropped it. He asked me what I was going to do in the matter, and I said, "Nothing, because we all certified to the correctness of the matter," and they were satisfied with it and they personally wrote them in.

Q. That is what you testified to.

RE-DIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Mr. Walker, you were asked whether there was not some suggestion of measuring from the supposed center of the lamps as they would be hung in these brackets. Would it have been possible for you to have made an accurate measurement of the distance between the centers of the lamps as they would hang in the brackets without having the lamps present to make that measurement? A. No, sir.

Q. The lamps were not present?

A. The lamps were in Tacoma.

Q. And were never submitted to the draftsman or to any of the others of you who made these measurements? A. No, sir.

Q. Referring to the interview of April 23rd in Mr. Lawrence Bogle's office, between yourself, Mr. Hayden and Mr. Lawrence Bogle: You had not received any copy of the blue print?

A. No, sir, I have never received a copy of the blue print.

Q. And do you know whether at that time the claimants or their attorneys had been furnished with any copy?

MR. HAYDEN: I think that has all been gone into, judge; yesterday he went into it very fully.

A. I understood from Captain Logan that he furnished them with a copy—with the only one that was in existence.

Q. I mean the claimants—by the claimants I mean the attorneys of the steamship "Virginian"?

A. Oh, no, no; they never have been furnished any.

Q. At the time of this interview on April 23rd that is referred to, there was some considerable feeling developed between yourself and Mr. Lawrence Bogle and Mr. Hayden, was there not? A. Yes.

Q. What was it about?

A. Simply because of the shabby way in which I had been treated. The drawing we made had been smuggled away into Mr. Hayden's hands, where it had no business; it belonged to the surveyors that made it and each one of us should have had a copy—our copy, as agreed.

Q. At this interview did you or Mr. Lawrence Bogle make a demand on Mr. Hayden for a copy of this signed blue print? A. Yes, sir.

Q. And what reply did he make?

A. I forget the reply; something that he didn't think that it was correct, or something of that kind.

Q. Did he agree to furnish it or did he furnish it?

A. Not to my knowledge.

Q. Did not Mr. Hayden at that time take the position that he would not furnish you or us with a copy of that blue print unless we would consent, in advance, that these figures 46-10 should be changed to "47-7"?

A. Yes, sir.

Q. Mr. Bogle contended that inasmuch as the measurements were taken by stipulation between both sides and by agreement that both sides should be furnished with blue prints, that we were entitled to a copy of those blue prints, did he not? A. Yes, sir.

Q. (Mr. Hayden) You remember that distinctly, do you, Mr. Walker? A. Yes, I do.

Q. And you remember distinctly my——

MR. W. H. BOGLE: I am not through.

MR. HAYDEN: Oh, I thought you said that was all.

MR. W. H. BOGLE: No.

Q. (Mr. W. H. Bogle) Mr. Hayden asked you if the matter was not left open at that time, to be further considered by you and Mr. Jack and Mr. Logan. Do

you recollect whether it was not stated by either you or Mr. Lawrence Bogle that if we were furnished with the copy—either the original or a copy of the signed blue print, that you would then look into the matter and compare it with your notes and take it up with Captain Logan or Captain Jack, with a view to determining whether there had been any mistake, but that you would not take any steps unless a copy of the blue print was furnished?

A. I distinctly made that clear at that time, that I would take it up with those people that were interested with me in making the measurements, provided I had a copy of it supplied me.

RE-CROSS-EXAMINATION.

Q. (Mr. Hayden) And in connection with that statement, do you remember my saying that you could check over the blue print that I had, if you wished to verify your figures in any way, that the blue print was there for you to do so?

A. I don't recollect any such offer.

Q. You don't recollect that. You recollect my saying, don't you, that if the measurements could not be agreed upon between you gentlemen, since I had received information from Mr. Jack and Mr. Logan and Captain Crerar that they were incorrect, we would have to take testimony on the subject, unless you could subsequently agree with the surveyors about the matter, and that I objected to handing to anybody a blue print that I knew positively, from my own recollection and observation, was incorrect, so that it would get into circulation and risk the rights of the parties in connection with this litigation?

A. I recollect telling you that you had no right to that blue print at all, that blue print belonged to us.

Q. That is all right, yes, but I am talking about your recollection of what I said.

A. I have not a very clear recollection of what you said.

Q. The fact is you didn't pay much attention to what I said; is that it?

A. You talked a great deal. No, I didn't pay much

attention to what you said at that time. It was not before a court.

Q. You were a little sore at Jack and Logan, weren't you?

A. I was sore at whoever might have confiscated the blue print, I was sore.

Q. You have been sore ever since, haven't you?

A. I was sore at the unprofessional and ungentlemanly way I was treated.

Q. You have been sore ever since, haven't you?

A. No, I forget this sort of thing. I have had other things to get sore at since then.

MR. HAYDEN: That is all.

MR. W. H. BOGLE: That is all .

THE WITNESS: I only get sore at the time being.

(Witness excused.)

MR. W. H. BOGLE: We now call upon the libelants to produce, at some time before the hearing of this case, the original blue print,—the original tracing from which the blue print identification "5-5" was taken, and the original memoranda and notes thta were furnished to the draftsman, from which the tracing was made. We desire these documents in order that they may be inspected and testimony taken upon them.

MR. HAYDEN: I will say, right now, that as far as I know—I have not personally the notes from which these tracings were made, but I will do the best I can to have them introduced in evidence.

MR. W. H. BOGLE: That will be all right. I just want to get them, as it appears from that letter that Mr. Jack, the representative of your client, has them.

(Filed Dec. 19, 1912.)

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective proctors, that depositions may be taken in behalf of the respective parties before Earl E. Richards, a Notary Public, at room 613 Central Building, Seattle, Washington, at the hour of 11 o'clock a. m., on December 9, 1912, and may be transcribed and read in evidence in behalf of the respective parties with the same effect as

though said depositions had been taken before the United States Commissioner to whom the taking of testimony in this cause was referred.

The signatures of the witnesses to the testimony as transcribed are hereby waived, and all other objections as to the time and manner of taking these depositions are hereby waived.

HUFFER, HAYDEN & HAMILTON,
Proctors for Libelant.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Respondent, Claimant and Cross-Libelant.

DEPOSITIONS.

BE IT REMEMBERED, that on December 9, 1912, at room 613 Central Building, Seattle, Washington, before me, Earl E. Richards, a Notary Public in and for the State of Washington, appeared Mr. W. H. Hayden (of Messrs. Huffer, Hayden & Hamilton), proctor for libelant, and Mr. Lawrence Bogle (of Messrs. Bogle, Graves, Merritt & Bogle), proctor for respondent, claimant and cross-libelant,

WHEREUPON, the following proceedings were had:

H. L. JACKSON, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) State your full name?

A. Jackson—H. L.

Q. What is your business, Mr. Jackson?

A. Sailor.

Q. How long have you been engaged in that business?

A. Well, since I first started in, it has been about 18 years ago; I was ashore for six years.

Q. Mr. Jackson, were you on the gasoline tug "Salmora" on the night of January 12, 1912? A. Yes sir.

Q. What voyage were you bound on at that time?

A. What do you mean, the number of it?

Q. No, between what points?

A. We were bound from Tacoma to Seattle.

Q. Did you pass the steamers "Strathalbyn" and "Virginian" on that night? A. Yes sir.

Q. About where did you pass them?

A. Between Pully Point and Robinson.

Q. What first attracted your attention to these two vessels? A. What first attracted my attention?

Q. Yes, what was the first thing that you saw?

A. I saw the masthead light and the range light of the "Virginian", was the first thing I saw, that is the first lights I saw.

Q. And what did you first see of the "Strathalbyn"?

A. I saw the "Strathalbyn".

Q. What do you mean by that, the hull?

A. I saw the outline of the ship.

Q. About how far distant were you from the "Strathalbyn"?

A. Oh, I should say a couple of three ship-lengths.

Q. Did you see any lights on the "Strathalbyn" at all? A. Yes, I did, when I got pretty near abeam of her.

Q. About what time was this, Mr. Jackson, that you passed these two vessels, or first picked them up?

A. That I don't know. It was between eight and nine. Now, just exactly what time, I don't remember. I think the biggest half, though, was on nine o'clock. Let's see, we left Tacoma—yes, it must have been between 8:30 and nine.

Q. Do you know about what the course of the "Strathalbyn" was at the time you first picked her up, that is, about which way she was lying?

A. No, I don't; I don't know exactly what her course would be.

Q. About what course were you on, approximately.

A. Well, we were on a northerly course.

Q. And how was she lying with reference to your vessel?

A. She would probably be on a southwesterly course, because she looked to be a little headed towards Robinson; that would probably bright her on a southwesterly course.

Q. Was the "Strathalbyn" moving when you first saw her?

A. Well, she was moving, yes, she was going

astern; as near as I could figure her out, she was going astern when we first saw her; if she was going any, she was going astern.

Q. Was her bow moving at all?

A. No, only sideways; her bow seemed to be swinging off.

Q. How did you pass these two vessels?

A. In what position, did you mean?

Q. Yes, that is, did you pass on the outside of the "Virginian" or between the two vessels?

A. We passed between the two.

Q. Leaving the "Strathalbyn" on—

A. (Interrupting) On the port side.

Q. The "Virginian" on your starboard?

A. The "Virginian" on the starboard.

Q. Was the "Virginian" moving at all?

A. The Virginian" appeared to be moving a little, but very slow.

Q. Was she moving forward or astern?

A. She was moving ahead, yes.

Q. Mr. Jackson, about how far away and what was your approximate position with reference to the "Strathalbyn" when you first saw her port light?

A. About how she would bear, you mean?

Q. Yes.

A. Oh, I should say she would bear two or three points.

Q. Off your bow? A. Yes.

Q. And about how far away were you?

A. Oh, about 150 to 200 yards.

Q. Did you see her starboard light at all?

A. No sir, saw no starboard light at no time.

Q. Did you see her masthead light?

A. I saw her masthead light when we got pretty near abeam of her, yes sir.

Q. Did you see the "Virginian's" lights?

A. Yes sir.

Q. About how far away?

A. Well, when we first picked them up?

Q. Yes.

A. Oh, I should say we were a good mile all right when I first came up.

Q. You saw them when you first came on deck?

A. Yes, the "Vriginian's" lights; that is the headlight and the range light.

Q. Mr. Jackson, what was the nature of the lights aboard the "Strathalbyn", as to brightness?

A. Brightness? Oh, they were very, very dim. Very dim.

Q. You are speaking now of what lights?

A. The masthead light and her side lights, the port light.

Q. Did you see any other lights aboard of her at all as you were passing her?

A. Well, there was—appeared to be—there was lights; there wasn't very many; of course I was not paying much attention to that; I saw there was a few lights there, but not very many; appeared to be lanterns.

Q. Moving along the decks, were they?

MR. HAYDEN: Let the witness testify.

A. No. I can't say they were moving around any. There were a few lights there, but very few.

Q. (Mr. Lawrence Bogle) Were these two vessels headed on approximately parallel courses when you saw them?

MR. HAYDEN: I object to that as leading.

A. Yes, when I first saw them, you mean, when they first came in sight?

Q. No, what I mean is when you passed between them? A. Yes, yes sir.

MR. HAYDEN: I object to it as leading.

Q. (Mr. Lawrence Bogle) Could you make out the hull of the "Strathalbyn" as you passed between the "Virginian" and the "Strathalbyn"? A. Yes sir.

Q. Passed abeam of her? A. Yes sir.

Q. How far off were you when you passed abeam of the "Strathalbyn"?

A. Oh, between 100 and 150 yards. We were closer in on the "Virginian" than we were the "Strathalbyn"?

Q. Did you have any difficulty in making out the "Strathalbyn"?

MR. HAYDEN: Objected to as leading.

Q. (Continuing) —as you approached her?

MR. HAYDEN: Same objection.

A. Could I what?

Q. (Mr. Lawrence Bogle) Did you have any difficulty in making out the "Strathalbyn"?

MR. HAYDEN: I object to it as leading. I want these objections to run to it.

A. Well, we didn't have much difficulty, no, after she came in sight, we could see her whole outline.

Q. (Mr. Lawrence Bogle) You were then about how far distant? A. When we went between them?

Q. No, when you first saw her outline?

A. Oh, when I first seen her?

Q. Yes.

A. Oh, when she first came in sight she didn't loom up very plain, no, because it was kind of dim and kind of hazy, dark; but I should say we were—oh, when I first picked up the "Strathalbyn", she was a couple or three ship-lengths all right, when I first seen her.

Q. Could you see how she was loaded when you passed abeam of her?

A. Well, she seemed to be loaded pretty deep, she seemed to have a lot of junk on deck; I don't know, I took it to be lumber, I don't know what it was.

Q. On what deck was that?

A. Well, that is what is called the main deck.

Q. What is the size of the vessel you were on—the "Salmora"?

A. Her tonnage, do you mean, or her length?

Q. Her tonnage, approximately?

A. She measures 30 tons, I think.

Q. And what would be the height of her deck above the water?

A. What her—I want to understand you right—her main deck or—

Q. (Interrupting) Well, put it this way: About what was the height of the deck upon which you were standing when you saw the "Strathalbyn"—what was the height of that deck above the water?

A. Well, three feet.

CROSS EXAMINATION.

Q. (Mr. Hayden) What do you mean by a ship's length, Mr. Jackson? A. Ship length?

Q. Yes.

A. Well, I should say that is the length of the "Strathalbyn", as near as I could figure out her length.

Q. How long did you say the "Strathalbyn" is?

A. I should say between three and four hundred feet—or four or five hundred feet.

Q. When you speak of ship's length, do you mean 500 feet?

A. No, I would not say approximately 500 feet, because I don't know exactly the length of the "Strathalbyn".

Q. I want to find out what you mean by a ship's length, what distance do you give for a ship's length?

A. The length of the "Strathalbyn".

Q. Well, I want to know what you mean by it?

A. Well, then I say, if you want to see what I say she was, I would not say that I was right, but I would say she was approximately—I never saw the "Strathalbyn" only that one night, that is the only time I ever saw the "Srtathalbyn" to notice her—I would say she was 450 or 475 feet long.

Q. Then when you said ship's length you meant something between 450 and 475 feet long? A. Yes sir.

Q. When you saw the red light of the "Strathalbyn", what direction was she from you?

A. She was on our port bow.

Q. And what direction from you?

A. A little ahead of us.

Q. I am asking the direction? A. The direction?

Q. Yes.

A. Well, I don't know how else I would give it to you. What do you mean, north, east, south or west?

Q. Yes. A. She would be north of us.

Q. When you speak of north, do you mean directly north?

A. No, no, not directly north, I would not say she was due north; she would probably be westward of due north. In a northerly direction.

Q. Was she on the line of your course between Robinson and Pully Point? A. On the line?

Q. Yes. A. What do you mean?

Q. Would she be on your course?

A. On our course? No, she would not be dead on our course.

Q. Which side of your course would she be on?

A. She would be on the port side of our course.

Q. She would be on the port side of your course?

A. That is, we are in the position of our ship; in the position from her, she would be on the starboard side of our course; I am speaking from the position of the ship that I was in, she was on the port side of us.

Q. I am talking about your course, though.

A. Yes.

Q. What side of your course was she on?

A. She was on the port side of our course.

Q. Who was master of the "Salmora"?

A. Draper was at that time.

Q. And you were doing what?

A. I was running the engine.

Q. What was the speed of the "Salmora"?

A. Oh, she made about nine knots.

Q. The atmosphere was clear that night, was it not, at the time—

A. (Interrupting) Perfectly clear, yes sir.

Q. It was a good night for seeing lights, wasn't it?

A. Yes sir.

Q. What other ships did you see, if any?

A. I saw the "Flyer".

Q. Did the "Flyer" pass you? A. Yes sir.

Q.. Where were you and the "Flyer" when you passed each other? That is, your distance between Robinson Point and Pully Point?

A. Oh, that I don't know, I would not say, because I was down in the engine room when we passed the "Flyer"; I was looking out through the engine room window when we went by the "Flyer"—I suppose it was the "Flyer"; that is the only one that I can figure it out to be.

Q. Where was the "Salmora" when you came on deck between Robinson Point and Pully Point?

A. Where was she at?

Q. Yes, when you came out on deck what position was the "Salmora" in as between Robinson Point and

Pully Point, was she closer to Pully Point than Robinson?

A. No, I fancy she was a little closer to Robinson.

Q. When you first came on deck?

A. When I first came on deck.

Q. Did you take any special notice of that? A. No.

Q. Did you take any special notice where the "Strathalbyn" and the "Virginian" were lying with respect to the distance between the two points at the time you passed them? A. No.

Q. Do you know whether it was nearer Robinson's Point or Pully Point?

A. At the time we went between the two of them?

Q. Yes.

O. Well, no, I think it was—if any, it was a little bit nearer Pully Point. But I don't know, I have never seen the log book since, I don't know what time we passed Robinson Point, nor I don't know what time we passed Pully Point.

Q. But your present recollection is, you think they were closer to—

A. (Interrupting) I think she was nearer Pully Point.

Q. What do you mean by saying that the "Strathalbyn" was sort of headed toward Robinson Point?

A. Well, he asked me what course she was on. Well, now, what course she was on I don't know, only it must have been a southwesterly ourse, because she looked to me as if she was headed a little inside of Robinson Point instead of outside of Robinson Point. You understand what I mean.

Q. Yes, I understand what you mean. And you say that the "Strathalbyn" at that time was backing?

A. She appeared to be backing, yes.

Q. How did you judge that? A. How?

Q. How did you judge that?

A. How did I judge that? Because her bow seemed to be swinging off.

Q. Swinging off—what do you mean by "swinging off"?

A. Swinging off. She was backing to port. When she started to back she backed this way.

Q. What direction was her bow swinging?

A. Her bow was swinging to starboard.

Q. Swinging to starboard. You say her bow was swinging to starboard when you first saw the loom of her?

A. Oh, no; oh, no; when I first saw the loom of her I don't know how her bow was swinging or whether she was moving at all or not.

Q. You could not tell that?

A. I could not tell.

Q. Then how could you tell her bow was swinging to starboard? At what time did you notice her bow was swinging to starboard?

A. We noticed her bow was swinging to starboard when she opened up the "Virginian's" starboard light and showed her port light.

Q. And you say the "Virginian was moving ahead?

A. The "Virginian" appeared to be moving ahead a little. Of course at the time that I first saw them I don't know whether she was moving or not—whether either one of them was moving or not—but we could not tell.

Q. What position were you in when you noticed that the "Virginian" appeared to be moving ahead?

A. What position?

Q. Yes, how far away—

A. (Interrupting) I didn't notice—as a matter of fact, I didn't notice whether the "Virginian" was moving at all or not until we got pretty near between the two of them.

Q. Did you cross the bow of the "Virginian"?

A. No sir, never, at no time.

Q. Did you cross the bow of the "Strathalbyn"?

A. We did, yes sir.

Q. Then you came up on the starboard side of the "Strathalbyn"?

A. No, came up—when we passed her?

Q. Yes.

A. No, we didn't come up on the starboard side of the "Strathalbyn". We did too, the way she was lying, she appeared to be lying across, she appeared to be lying

across like that, when we came up; we approached her on the starboard side, yes, but we didn't come up on the starboard side.

Q. You can't get anything into the record with your fingers that way, you know, Mr. Jackson.

A. No, I know.

Q. She appeared to be how when you came up to her, heading which way?

A. She appeared to be heading broadside to, to us, or nearly broadside to.

Q. Which way was she heading?

A. She was headed—well, that would be south, in a southerly direction.

Q. That would not be broadside to your course?

A. Well, it would be pretty near broadside to our course.

Q. Well, give the compass directions?

A. Well, she was headed in towards Pully Point, in that way.

Q. What was?

A. The "Strathalbyn", right across the "Virginian".

Q. Was headed in towards Pully Point?

A. Well, in, inshore, in towards that shore.

Q. When did you see her headed that way?

A. When I first seen her?

Q. Well, then she would be on a northerly direction then? A. No, she would not be on a northerly direction.

Q. When she was headed toward that Point she would be.

A. In towards Pully Point don't understand, because she was this way, I say she was heading in on that inshore side, the Pully Point side. You understand what I mean.

Q. What course do you take between Robinson Point and Pully Point?

A. I don't know. I never noticed her course. We steered a northerly course, we were coming in a northerly direction; now, just what her course is I don't know.

Q. Suppose the course was northwest by north half north—suppose that is the course— A. Yes.

Q. (Continuing) —how would the "Strathalbyn" be heading, if that were the course that you were steering, when you first saw her?

A. Northwest by north half north?

Q. Yes? A. How would she be heading?

Q. Yes.

A. Well, then I would say she would be heading about north by east—northeast—somewhere in there. If we were headed northwest by north—did you say north by north and half west or north by west and half west?

Q. No, northwest by north and half north?

A. Well, if we were heading—no, she would not be that way, neither, she would be further around; if we were heading northwest by north and half north, she would be away around about east by south, that is where she would be.

Q. About east by south?

A. East by south, somewheres in there.

Q. That is the direction you first noticed her in?

A. Yes sir.

Q. When she was lying about broadside to you with her starboard side to you?

A. With her starboard side to us?

Q. Well, about broadside to you?

A. Yes; well, about.

Q. About right angles to your course—is that what you mean?

A. Yes. Of course we could not see it, it was dim, we could just barely see the outline of the ship, that is all.

Q. You said, if I understood you correctly—I don't want to try to catch you at all, I want to get it as you saw it—when was it that you saw her heading inside of Robinson Point? A. When was it?

Q. What position were you in?

A. Oh, we were still in the same position, we never changed any, we kept coming along.

Q. Yes, I know, but what I mean is with respect to the "Strathalbyn" and "Virginian"?

A. Well, that is when we—when she opened up her port light.

Q. Yes, naturally.

A. You want the distance we were off?

Q. No—yes, that will do.

A. She was bearing about two or three points at that time.

Q. Two or three points off your bow?

A. Off our bow, yes.

Q. Off your port bow? A. Yes.

Q. And how was the "Virginian" bearing at that time, from you? A. The "Virginian"?

Q. When you first saw the "Strathalbyn"s port light, how was the "Virginian" bearing from you.

A. She was bearing I should say probably a point, point and a half.

Q. Off your port bow?

A. No, off our starboard bow. No, not that much, but I should say—

Q. (Interrupting) There was a difference of three to four and a half points in the position of the vessels from where you were at the time you saw the "Strathalbyn's" red light? A. Yes.

Q. You say you saw the "Stratahlbyn's" red light, as I understand it, when you were about abeam of the "Strathalbyn"? A. No, no.

Q. Was it a masthead light?

A. Masthead light? I saw the side light before I saw the masthead light. I didn't see the masthead light until I got pretty near abeam of it.

Q. I see.

A. I say it looked—the masthead light, when I seen it, it looked to be shining over the port side. Whether it was or not I would not say, but that is the way it appeared to be.

Q. You saw the "Starthalbyn", then, a considerable time—saw the outline of her a considerable time before you saw her red light?

A. Yes. Well, considerable time—it was not such a son-of-a-gun of a long time; it was quite a while, too.

Q. How long would you say it was?

A. Oh, I would not say how long it was.

Q. Quite a space of time, though, was it?

A. It was quite a space of time, yes.

Q. Did you at any time notice the "Starthalbyn" going ahead? A. No, I don't believe I did.

Q. When the "Strathalbyn" was broadside to you, having her starboard side to you, when you first saw her in that position, as I understand it, the "Virginian" must have been on the opposite side of her so that you could not see her lights? A. Yes sir.

Q. In other words, it would be sort of north of her?

A. Yes.

Q. You being to the southerly?

A. She was on the port side of her and we were on the starboard side of her.

Q. Did you see the "Virginian's" green light while the "Strathalbyn" was lying across your course?

A. No sir.

Q. You did not see the "Virginian's" green light until the "Strathalbyn" was headed, as you say, what appeared to be a little inside of Robinson's point?

A. Yes sir.

Q. And then you saw the "Virginian's" green light?

A. Yes sir. Appeared to us as if the "Strathalbyn" was backing away from her and she opened up the "Virginian's" starboard light or green light.

Q. So before the "Strathalbyn" was backing away from the "Virginian" she must have swung from that easterly direction around over until she was heading up towards Robinson's Point light—

A. (Interrupting) Yes.

Q. (Continuing) —a little inside of it?

A. Yes sir.

Q. You say the "Virginian" was going ahead?

A. She appeared to be going ahead when we went by her, yes sir.

Q. What did you judge she was going ahead by, what objects did you compare her motion to?

A. We didn't have no object to compare her motion by, any more than she just simply appeared to be going by, by her lights in the water; but we could darn soon tell if I had thought about to look to see whether her wheel was turning or not, but I never noticed to see whether her wheel was turning or not. All we judged is just simply by the water and the ship.

Q. When you first saw the "Strathalbyn's" masthead lights, how were they bearing from you?

A. "Strathalbyn"? Bearing pretty near abeam.

Q. When you first saw the "Virginian's" masthead lights, how were they bearing from you?

A. They were bearing pretty near dead ahead.

Q. On which bow did you have them, do you remember?

A. Oh, I don't know as it was on any bow. It appeared to me, as near as I can remember—when I first saw them they appeared to be pretty near dead ahead, might have been a little on one bow or the other; I never noticed that very strong; I saw the lights was there and that is all there was to it. Practically dead ahead.

Q. When you first saw the "Strathalbyn", you noticed her by the loom of her? A. Yes sir.

Q. And you were two or three ship-lengths away from her—that is your idea about it? A. Yes.

Q. Don't you think you were further away from her than that?

A. Well, no, I don't hardly think I was; I don't think—if we had been further away than that I don't think we could have seen her. She might have been—

Q. (Interrupting) I am thinking of the position she was in, however, she had to turn 90 degrees or more—

A. (Interrupting) Yes.

Q. (Continuing) —after you saw her? A. Yes.

Q. Your vessel was going nine knots an hour?

A. No, she was not going nine knots an hour at that time. You were asking me what the speed of the "Salmora" was and I gave you her average speed, nine knots; you didn't ask me how fast she was going at that time.

Q. Tell me how fast she was going at that time.

A. That is something I could not say. She was not going nine knots an hour. She can only make nine knots when she is perfectly light and in good condition, and when you come over there it is pretty hard to gauge the speed of a gas boat that way, and she was loaded right down and I would not attempt to say how fast she was going. Something I never kept no track of.

Q. Then you can't say that she was not going nine knots, can you, if you didn't keep any track of it?

A. Yes, I can say she was not going nine knots

Q. You can't say she was not going eight knots, can you? A. How?

Q. Can you say she was not—

A. (Interrupting) No, I can't say she was not going eight knots, but I can say she was not going nine knots.

Q. She was going somewhere between eight and nine knots, then?

MR. LAWRENCE BOGLE: I object to that. The witness did not testify to that.

MR. HAYDEN: I am asking him a question.

A. I would not say she was going between eight and nine knots, because I don't know; but she was not going nine knots, because she can only make nine knots when she light and clean. I have had a log over on her two or three times; sometimes she would be seven konts; sometimes she would go eight knots.

Q. You don't know the time you left—

A. (Interruptin) No, I don't—Tacoma.

Q. (Continuing) —Tacoma. You don't know the time you got to Robinson's Point? A. No.

Q. And I presume that can be figured out?

A. That can be figured out from the log.

Q. Suppose you were going eight knots an hour, don't you think if you were going eight knots an hour that you would be more than two or three ship-lengths off when you saw that hull, if she had to turn — the "Strathalbyn" had to turn—

A. (Interrupting) Oh, I don't know—

Q. (Continuing) —that distance?

A. I hardly think so.

Q. Do you know how long it would take you to go 900 feet, going at eight knots an hour?

A. 900 feet. No, I could not tell you right off-handed.

Q. How many feet in a knot? A. 6,080.

Q. Then, as I figure it, you would go 410 feet in a minute.

MR. LAWRENCE BOGLE: We object to that unless the witness figure it himself. He is testifying, you are not.

A. Is that what you figure it at, four hundred and what?

Q. (Mr. Hayden) 410 feet in a minute.

A. How fast, how many knots an hour?

Q. Eight knots an hour.

A. Eight knots an hour, she will go 410 feet a minute?

MR. LAWRENCE BOGLE: You can have the witness testify or figure that out, but I object to the witness taking your figures.

Q. (Mr. Hayden) Well, look over my figures, Mr. Witness (handing paper to witness).

MR. LAWRENCE BOGLE: Figure it out yourself, if that is what he wants.

A. (Witness examines figures made by Mr. Hayden.)

Q. (Mr. Hayden) Do you understand the way that is figured? A. Yes.

Q. Are those figures right? A. Yes, that is right.

Q. Don't you think you must have been a little further away? A. No.

Q. (Continuing) —than two ship-lengths?

A. I said two or three ship-lengths.

Q. Well, three ship-lengths. Don't you think you must have been a little further away than three ship-lengths? A. No.

Q. You don't? A. No.

Q. Now, the first thing you saw, then, was the outline of the hull lying at right angles to your course—the hull of the "Strathalbyn"? A. How?

Q. The first thing you saw was the outline of the hull of the "Starthalbyn", lying at right angles to your course?

A. The first thing I saw was—that is of the "Strathalbyn"—

Q. Yes.

A. (Continuing) —was the fore part of her hull, yes.

Q. Was the fore part of her hull?

A. The fore part of her hull.

Q. Didn't you see the after part of her hull?

A. I suppose I could have seen the after part of her hull if I had took particular pains to notice it, but I never noticed it.

Q. How is it you happened to notice the fore part particularly?

A. Because I was looking at the "Virginian", for the "Virginian's" side lights. We didn't know that there was two ships there until we saw the "Strathalbyn". What was worrying us was where the side light of this other ship was; we seen her headlight and we seen her range light and they appeared to be directly dead ahead of us. If they were in that position, which they certainly showed, then we should have seen her side lights. Now, why didn't we see her side lights?

Q. You were worrying about that, were you?

A. We were worrying about that.

Q. What were you worrying for? A. How?

Q. Why were you worrying?

A. Because we were in a damn bad predicament.

Q. Why?

A. We didn't know whether to go this way or that way.

Q. Why were you worrying, in a damn bad preidcament, when you could see the range light and masthead light of the "Virginian"? A. Why?

Q. Yes.

A. Well, now, that don't do you but damn little good; you don't know what they are going to do.

Q. Aren't they amidships? A. Yes.

Q. And they are in line with each other?

A. They are in line with each other, yes.

Q. And you can tell which way a vessel is going or heading? A. You can, certainly you can.

Q. What were you worrying about, then, if you knew what way she was going?

A. We were worrying about her side lights. I don't say we were worrying, we wasn't nervous, because we could have turned around and run off the other way.

Q. That is what I thought.

A. But that is not navigation; that is not navigation, you see.

Q. So you were not worrying at all, then?

A. Well, not to be—we were not worrying, if you want to call "worrying" to be scared or nothing like that; we were not scared; nothing like being scared, no, not a bit of it; we could have turned around and run out of the way. We can turn around in our own length, but the question was, where was her light? When you are passing a ship, you look for either one light or the other —either a red light or a green light.

Q. With respect to the time of seeing the red light of the "Virginian", how long before or after you saw the red light of the "Virginian" was it before you saw the green light—or the red light of the "Strathalbyn" before you saw the green light of the "Virginian"?

A. Before I saw—what was the question?

Q. How long after you saw the red light of the "Strathalbyn" was it before you saw the green light of the "Virginian"?

A. I saw them practically at the same time, nearly the same time.

Q. How far off was the "Virginian" from the "Strathalbyn" at the time you first saw the red light on the "Strathalbyn"?

A. How far were they apart, you mean?

Q. Yes. A. The two ships?

Q. Yes.

A. Oh, I don't know. Let's see, oh, I should say was between 150 and 200 yards, somewheres in that neighborhood.

Q. How far off was the "Virginian" when you passed her, between the two vessels—going between the two vessels? A. How far off from us, do you mean?

Q. Yes.

A. Oh, I should say between 40 or 50 yards, I guess, somewheres along there; maybe not that far.

Q. Did you notice any light at all, other than the lights you have mentioned, on the "Strathalbyn"?

A. Other than the headlight and side light, you mean?

Q. Yes.

A. The lanterns—I call them lanterns around on deck.

Q. Did you notice any lights in the rooms?

A. I never noticed any.

Q. Didn't notice any? A. I never noticed any, no.

Q. You would not say they were not there, would you? A. No, I would not say they were not there.

Q. You would not say they were not showing through the port holes, would you?

A. Well, I never noticed any. I would not say that they was not, no. I never noticed any.

Q. How far away was the "Flyer" from these two vessels when you passed them?

A. Well, that I don't know; that I wonld not say.

Q. How long after you passed the "Flyer" before you came on deck?

A. Well, I don't know; it is quite a little while; I was fooling around the engine there.

Q. Do you remember what you were doing around the engine after you passed the "Flyer"?

A. No, I don't; I was fooling around there doing something, trying to get wise.

Q. About how long do you suppose you were down there fooling around the engine?

A. Well, I would not say, because when a man is fooling around time goes pretty quick sometimes.

Q. There was quite a little while, wasn't there?

A. There seemed to me to be quite a little while, yes; I would not say how long.

Q. What does it seem like now, in time, to you?

A. Well, I would not attempt to say, because I might say an hour and it might be five minutes, and I might say a half an hour and it might be twenty minutes; I don't know; I never took no particular notice of it. I stuck my head out of the window when the "Flyer" went by and I never paid any more attention, any more than I know I was fooling around the engine room.

Q. How long was the red light of the "Strathalbyn" in view after you first saw it? A. How long?

Q. Yes.

A. Oh, it was not in view very long, because we we went by it.

Q. I know you did. I want to know how long it was. A. Oh, a few minutes—darn few.

Q. Naturally, but I want to know how long?

A. Well, don't know. Understand, I was not in the wheel house, I was on deck; I was not running the ship; if I had been running the ship I might have been taking that thing all into consideration, but I was not.

Q. You mean to say you don't know—is that it?

A. I don't know just how long it was before we shut it out, because you have only got to go two points abaft the beam from the ship before you shut it out.

Q. Did you see it as much as a minute, do you suppose? A. No, I don't believe it was a minute.

Q. Did you see it while you were traveling 400 feet? A. What?

Q. Did you see it while you were traveling 400 feet?

A. No, I don't know. Might have been, but I don't think it. When we saw it, it was in pretty close quarters when it opened up.

Q. It was simply a glimpse you got of it, then—is that is?

A. A glimpse? Well, you would not call it a glimpse, either. If you glimp at anything you simply look at it. We see it from the time it opened up, that is, dead ahead, until it was two points abaft the beam.

Q. You saw the "Strathalbyn's" light—I think you are wrong there, aren't you?—the red light of the "Strathalbyn", is that what you are talking about?

A. Yes.

Q. Did you go on the starboard side or port side of the "Strathalbyn"?

A. We went in on the port side of the "Strathalbyn".

Q. You crossed upon the port side of the "Strathalbyn"? A. Yes.

Q. Then the "Virginian" was on the port side of the "Strathalbyn" too? A. Yes.

Q. When you passed between the "Strathalbyn" and the "Virginian", how much further north—or what was the distance between the bow of the "Strathalbyn" —or the stern of the "Strathalbyn" and the bow of the "Virginian" in, say, a northerly direction?

A. What was the difference between the stern of

the "Strathalbyn" and the bow of the "Virginian" in a northerly direction?

Q. Yes. A. In a northerly direction?

Q. Yes. A. Well, that I don't know.

Q. The "Virginian", as I understand the positions, must have been somewhat to the east—

A. (Interrupting) Yes.

Q. (Continuing) —of the "Strathalbyn"?

A. Yes.

Q. Now, I want to know what the distance was, how much further north she was away from the "Strathalbyn" when you went between them?

A. Oh, that I don't know. I don't remember how far she was.

Q. Well, the vessels were not right opposite each other? A. No, no. No, they were not opposite.

Q. The "Virginian" was north of the "Strathalbyn"?

A. The "Virginian" was north of the "Strathalbyn" all right.

Q. And to the eastward of her? A. Yes.

Q. You don't know what time it was that you passed these two vessels? A. No, not exactly.

Q. You didn't see the collision, then? A. Oh, no.

Q. Didn't see the vessels before the collision?

A. No.

Q. Do you know how long it was between the time the "Indianapolis" passed you—

A. (Interrupting) No sir.

Q. —and the time you got up there? A. No sir.

Q. You don't know the time the "Indianapolis" passed you? A. No sir.

Q. Don't know where she passed you? A. No sir.

Q. Didn't see her pass?

A. I didn't see the "Indianapolis" at all.

Q. You say you saw the masthead light when you got pretty near abeam? A. Yes sir.

Q. How much did it lack of being abeam before you saw the masthead light?

A. How much did it lack of being abeam?

Q. Yes.

A. Lacked about an eighth of a point, quarter of

a point; I was a little forward of the beam, I was standing a little forward. It was right dead abeam of me when I seen it.

Q. Right dead abeam of you? A. Of me.

Q. You are talking about when the ship was abeam?

A. What?

Q. That is when it was abeam of your ship?

A. When it was abeam of me. It was not abeam of the wheel-house.

Q. You were forward of the wheel-house?

A. I was forward of the wheel-house.

Q. How many feet forward?

A. Oh, I was probably five or six or six or eight feet. I was standing on the hatch.

Q. When it was abeam of you—when you picked the light up it was on your beam?

A. It was on my beam, yes.

Q. And your vessel had been swinging around there to avoid these two ships?

A. Well, he had been working it around, I suppose; not very much, though, he could not have been wiggling around a whole lot, because I never noticed it any, I never noticed him wiggling around any. Of course there was nothing there for me to tell that he was moving around by, she has got no jack-staff or nothing.

Q. And you were looking over the bow?

A. No, I didn't look over the bow particularly.

Q. You saw them coming up right ahead of you?

A. I saw them coming up, yes, but how much he changed his course, I don't know, how much he altered it; I could not say whether he altered it at all or not; he must have altered it some, but how much I don't know.

Q. Was your vessel then at right angles to the "Strathalbyn" when you saw this light abeam of your vessel? A. Oh, no.

Q. How was it compared with the "Strathalbyn"?

A. That is after she had backed clear.

Q. How did the course of your vessel compare with the course of the "Strathalbyn" at the time you say that you saw this light abeam of your vessel?

A. It would be just opposite.

Q. Right parallel then?

A. Yes, only she was steering the direct opposite course than what we were, any more than she looked to be a little more inside.

Q. Do you remember about how long it was that you saw this masthead light?

A. No, I don't. I remember seeing it, and he says to me then, he says, "That's a damn poor headlight, ain't it?" I says, "It looks pretty dim all right." I never noticed it any more, I just simply looked at it, but I suppose we looked at it there possibly thirty or forty seconds, just took a good look at it. Just took a good look at it.

Q. Did you look at the vessels after you passed them at all?

A. I turned around and had a look. We didn't see anything that was out of the way. We saw the ships there. I don't know how far it was. We got beyond her before we could see him—or before we shut him out. We saw him for that little time, of course.

Q. What did you see?

A. We saw the lights of the "Virginian".

Q. What did you see of the "Strathalbyn"?

A. Saw the "Strathalbyn", that is all we saw.

Q. Did you see any lights on her at all?

A. Well, I saw—as I told you before, I saw these lanterns, it looked like to me—these lanterns, that is all; she seemed to have—after we got by entirely, the last thing I saw of the "Strathalbyn", whether it was a lantern or whether it was meant for a stern light or what it was, I don't know.

Q. But you saw a light there, did you?

A. I saw a light on her stern. As to what it was, I don't know. That is the last thing I saw of the "Strathalbyn". Whether it was a lantern or whether it was meant for a stern light—

Q. (Interrupting) That would be naturally the last thing you would see of her?

A. Well, it is supposed to be the last thing you see, is a stern light.

Q. That is what I thought.

A. It didn't appear to be—

Q. (Interrupting) Do you know what position you were in when the masthead light went out of view?

A. No.

Q. Of the "Strathalbyn"? A. No.

Q. Whether you were abaft of her beam or not?

A. No, I don't. We wasn't abaft her beam when I looked at it—that is, we were not abaft of her beam.

Q. That is, I mean when you last saw it were you abaft of her beam?

A. When I last saw it we were not abaft of her beam, no, but I did not notice the headlight no more after he looked at it there and he was talking about it a second or so, I never noticed it any more.

Q. Did the red light appear to be about the same degree of brightness from the time you first saw it until you got opposite it and went out of view?

A. Well, no, I don't know as it did. It is bound to be a little bit dimmer when you first see it than when you get abeam of her; when you get the lens just exactly right they are bound to loom up more, and it was naturally dimmer when I first saw it than—

Q. (Interrupting) How did it look when you got abeam of it, was it a pretty bright light?

A. No, it was not bright. It was a very rotten light for a side light.

Q. You say it was a rotten light? A. Yes sir.

Q. You don't know how far you could see it, do you? A. Don't know how far I could see it?

Q. Yes.

A. No. Well, I would not say just exactly how far I could see it, but I could not see it no two miles, that is a cinch.

Q. You don't know how far you could see it, do you? A. I know you could not see it no two miles.

Q. You were in no position to tell that at any time, were you?

A. Well, you can pretty near tell if you see a light, you can pretty near tell.

Q. I am asking you this question: Were you in a position to tell whether you could see it two miles or not?

A. We were not off two miles to see it, but if we had been two miles off we could not have seen it.

Q. That is your opinion of it?

A. That is my opinion of it, yes.

Q. The night was a perfectly clear night, was it?

A. Yes sir.

Q. The atmosphere was clear?

A. The atmosphere was clear, as clear as it always is around the bays here.

Q. You could see lights very well that night?

A. Yes sir.

Q. And you saw the light quite clear as you got opposite it?

A. It loomed up a little brighter when we got right opposite it, yes sir.

Q. You are used to electric lights on vessels, aren't you? A. I am used to both.

Q. On sailing vessels? A. How?

Q. Do you work on sailing vessels?

A. Steamships.

Q. How old are you? A. Twenty-nine years old.

Q. Did you ever burn Colza oil in your lamps?

A. Sir.

Q. Did you ever burn Colza oil in your lamps?

A. Colza oil? Not that know of.

Q. Never did? A. Not that I know of.

Q. What kind of oil do you burn in the lamps you have been used to?

A. Well, I have burned nut oil, burned kerosene.

Q. You don't know what they call a nut oil, do you —the name of it? A. The Chinese nut oil.

Q. You don't call it Colza oil, do you?

A. Well, I don't know. That is all I know it by, is Chinese nut oil—burned that, and then this headlight oil, kerosene.

Q. When you saw the masthead light did it appear to be dim, and, if so, how far would you judge in your opinion you could see it?

A. Well, it appeared to be dim and appeared to be smutty; that is the way it looked to me.

Q. How far would you judge probably you could see it?

A. Oh, I should judge probably you could see it—oh, if a man would look he could probably see it—I would

not say that he could see it over 300 feet; I would not say that you could see it that far, but not over that. That is my opinion of it.

Q. What is the distance you are supposed to see the white light?

A. Two miles, three miles—headlight, you mean?

Q. Yes.

A. No, five miles; side lights two miles.

Q. What would you say in your opinion would be the distance you could see the side light on this night in the condition it was in?

A. Well, I don't think it was visible over a mile.

Q. The side light? A. Side light.

Q. Do you think you could see it a mile off?

A. Well, I don't know. I will give a mile, but I don't think you could see it over a mile. That is my opinion of it. Of course a mile is quite a ways and a light has got to be a pretty good light.

Q. So that the masthead light seemed to be a good deal dimmer than the side light?

A. Oh, yes; yes, a good deal; it appeared to be smut—black; that is the way it looked to me.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) How far away did you see the masthead light, Mr. Jackson?

A. Oh, I don't know how far it was.

Q. You saw it when you were abeam?

A. When I was abeam, yes.

MR. HAYDEN: Don't lead this witness, please.

MR. LAWRENCE BOGLE: Now, just a minute.

MR. HAYDEN: I am going to get my objection in.

Q. (Mr. Lawrence Bogle) You were approaching this vessel, did you say on the starboard side?

MR. HAYDEN: I object to it as leading.

A. What?

Q. (Mr. Lawrence Bogle) When you first——

A. (Interrupting) Approaching the "Strathalbyn" on the starboard side?

MR. HAYDEN: Objected to as leading and immaterial, not proper re-direct.

Q. (Mr. Lawrence Bogle) I say, you testified you were approaching the "Strathalbyn"—appeared to be

approaching her from the starboard side when you first saw her outline?

MR. HAYDEN: Objected to as leading.

A. Yes, sir.

Q. You think she was heading in what direction at that time? A. Easterly, a little south of east.

Q. If she was headed in that direction, was she in a position where you should have seen her masthead light?

MR. HAYDEN: Objected to as immaterial.

A. Yes, I think she was; if her headlight had been in the proper position, I think that we had ought to have been able to have seen it.

Q. (Mr. Lawrence Bogle) When you first saw the outline of this vessel, could you make it out very plain?

A. No, sir.

MR. HAYDEN: Objected to as leading.

Q. (Mr. Lawrence Bogle) Could you tell accurately in which direction she was? A. No, sir.

MR. HAYDEN: Objected to as leading.

A. We could tell——

MR. LAWRENCE BOGLE: Let your objection run to all this.

MR. HAYDEN: No, I won't. I am going to put it in separately.

MR. LAWRENCE BOGLE: Well, all right, I don't care.

THE WITNESS: We know she was headed across. In just exactly what position she would be in, whether she would be right dead angle across us or whether a little diagonally across us I could not tell, but we knew she was headed in that way; that is all we could tell.

Q. In the way that you were headed, did you at any time cross her bow?

MR. HAYDEN: Objected to as leading.

A. Yes, sir.

Q. (Mr. Lawrence Bogle) Did you at any time see her starboard light?

MR. HAYDEN: Objected to as leading.

A. No, sir, I didn't.

Q. (Mr. Lawrence Bogle) Did you see her masthead light when you were crossing her bow?

MR. HAYDEN: Objected to as leading.

A. No, sir.

Q. (Mr. Lawrence Bogle) How far away do you think you were when you saw her port light, red light of the "Strathalbyn"?

A. Oh, when I first saw it you mean?

Q. When you first saw the "Strathalbyn's" port light?

A. Oh, I don't know, we wasn't very far away; I wouldn't say, because we were in pretty close quarters when she opened up. Just how far to put it I don't know; we were in pretty dogon close quarters when she opened up.

Q. Were you a mile away?

A. Oh, no. A mile? No.

Q. Then you don't know whether you could see her port light a mile or not?

MR. HAYDEN: I object as leading.

A. No, I don't, but we were never no mile off from it, but the way it looked to me, the way the light was burning there, it didn't look as though it would be visible for any mile.

Q. Do you think it would be visible a half a mile?

MR. HAYDEN: I object to that as leading.

A. Yes, I think it would be possibly visible a half a mile all right.

Q. (Mr. Lawrence Bogle) Did you testify that you were going eight knots an hour on this night, or 400 feet a minute? A. No, sir, I did not.

Q. In testifying as to courses, did you have any compass or any shore point from which to figure out the bearings and courses of the vessels?

A. I did not, no, sir.

Q. You testify merely to approximate courses?

A. Merely an approximate course. If I had been in the wheel-house—I said if I had been running the vessel I would have been able to tell. Captain Draper can tell you more about that than I can, because he was in the wheel-house and he knows what course he was steering, what time he came by these points.

Q. Did you have anything to do with the navigation of the vessel?

A. No, sir, none whatsoever, except when we were on a long run; if we were on a long run, of course we would take turn-about, he would run her so long and I would run her so long.

Q. Do you remember very clearly at this time how long you were below after the "Flyer" passed you?

A. No, sir, I don't.

Q. What lights did you have on the deck of the "Salmora"?

MR. HAYDEN: I object to that as immaterial.

A. I had two side lights and a masthead light and a main light.

Q. Were they oil or electric?

MR. HAYDEN: I object to that as immaterial.

A. Oil.

Q. (Mr. Lawrence Bogle) How did your lights compare with the lights on the "Strathalbyn"?

MR. HAYDEN: I object to it as immaterial and incompetent.

A. Well, we have got good lights on there, we have got fine lights, better than the usual oil lights of their size.

Q. (Mr. Lawrence Bogle) How do they compare with the "Strathalbyn's" lights?

MR. HAYDEN: I object to that as immaterial and incompetent.

A. They were a whole lot brighter than the "Strathalbyn's", because you could see our lights—you could see them easy two mile.

Q. (Mr. Lawrence Bogle) What was the appearance of the stern light or the light you saw on the stern of the "Strathalbyn," was that a bright light or dim light?

MR. HAYDEN: Objected to as leading and immaterial and incompetent.

A. I would not say that it was a range light, I didn't say that it was a range light—I say it might have been a range light—or a stern light, rather.

Q. (Mr. Lawrence Bogle) Stern light?

A. But it didn't appear to me to be in the right position to be a stern light. I know there was a light there, but whether or not it was a stern light I don't

know, I would not say it was nor I would not say that it was not.

Q. Had the appearance of a lantern, you say?

MR. HAYDEN: Objected to as leading.

Q. Had the appearance of a lantern.

Q. (Mr. Lawrence Bogle) Mr. Jackson, did you know, when approaching these two vessels, that there had been a collision or any trouble between them?

A. No, sir.

Q. You stated that the masthead light appeared to be shining over the port side. I wish you would explain what you mean by that.

A. Well, it appeared to be kind of canted off to one side over the port bow, instead of shining straight ahead.

Q. Could you see where that light was hung on the "Strathalbyn"?

A. Well, it appeared to be—it was hanging—it appeared to be hanging—seemed to be up on the fore-stay.

RE-CROSS-EXAMINATION.

Q. (Mr. Hayden) How big a light did this masthead light appear to be to you? A. How big?

Q. Yes, how much glass was exposed?

A. Oh, I would not say, because I don't think that I saw all the glass that was exposed, but the way it looked to me the light did not look over five inches, but I think there must have been a bigger light than that, but I don't think I saw the full width of the glass, I don't think that I saw it.

Q. Well, why do you say that?

A. Well, because it appeared to be—it seemed to shut out from right in the middle, it was brighter right in the middle and then shown dimmer out on the side. I don't think I saw the full length of the side of the light. In the same way, it seemed to be a little round spot right in the middle of it. That is the reason I think it was smutty, because it seemed to be a little round spot in the middle and then she would dim out both ways, up and down and on both sides. It looked just like it had been smoking and got smutted.

Q. You say there was about how much?

A. I should say about five inches. Of course I don't know——

Q. (Interrupting) Five inches. How much do you think you could have seen that light forward of the beam of the "Strathalbyn"?

MR. LAWRENCE BOGLE: Which light?

MR. HAYDEN: The masthead light we are talking about.

A. How much forward of the beam?

Q. Yes.

A. Oh, you could have seen it—you could have seen it ahead all right—you could have seen the headlight dead ahead, the way it was hanging.

RE-DIRECT EXAMINATION.

Q. (Mr. Lawrence Bogle) Did you see the masthead light when you were dead ahead? A. No, sir.

Q. What makes you say that you could see it?

MR. HAYDEN: I object to his cross-examining his own witness.

A. What makes me say that I could see it? Well, if I could see it at all I could see it ahead. The light was there all right.

Q. You were dead ahead, though, weren't you?

A. How?

Q. You were in a position dead ahead?

MR. HAYDEN: Same objection, cross-examining his own witness.

A. We crossed right by her bows.

Q. (Mr. Lawrence Bogle) You did not see it then?

A. No, I never noticed it then.

(Witness excused.)

An adjournment was here taken until 1:30 o'clock p. m.

Afternoon's Proceedings, December 9, 1912.

PRESENT: Same parties as at former hearing.

M. C. ERISMANN, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) Your full name is M. C. Erismann? A. Yes.

Q. What is your business? A. Naval architect.

Q. How long have you been engaged in that business?

A. Actively engaged in yards since 1898.

Q. In what yard were you in 1898?

A. I was with William B. Stearns, of Marblehead, Massachusetts.

Q. Shipbuilders and constructors?

A. Yachtbuilders.

Q. And from there where did you go?

A. I went to the Gas Engine & Power Company and Charles L. Seabury, Consolidated, New York City.

Q. What other establishments have you been connected with since that time, Mr. Erismann?

A. After that time I was connected with the Maryland Steel Company and Marine Construction Company and Drydock, in New York, and at Fore River Shipbuilding Company, Quincy, Massachusetts, up to about a year ago.

Q. What concern are you connected with now?

A. Lee & Brinton, naval architects, Colman Dock.

Q. Mr. Erismann, did you make an examination of the steamship "Strathalbyn" as she lay in port at Tacoma in January of this year, after her collision with the steamship "Virginian"? A. Yes, sir.

Q. At that time had the deck cargo of the steamship "Strathalbyn" been removed, was there any cargo on her forward deck?

A. There was no cargo to speak of on her forward deck.

Q. Were there any stanchions in place on the forward deck? A. No, sir.

Q. Did you make any measurements of the steamship "Strathalbyn" at that time?

A. I inquired of the authorities aboard the ship whether such measurements could be made and was told that all the measurements would be presented at the proper time and that no measurements would be permitted to be taken.

Q. So you were unable to get any measurements at that time? A. Yes, sir.

Q. Did you make an examination, Mr. Erismann, of the position of the light screens on the lower bridge of the steamship "Strathalbyn"? A. Yes, sir.

Q. And of the general nature of the construction of the steamer "Strathalbyn"? A. Yes, sir.

Q. How does the superstructure of the "Strathalbyn"—how is it constructed, is it on a vertical line or does it tumble home? A. It tumbles home.

Q. Mr. Erismann, from your examination of the construction of this vessel and the construction of these light-boxes on the lower bridge, what would be your opinion as to the visibility of a light placed in the light-box on the lower deck, if a stanchion was placed say eight feet forward of that light-box, flush with the rail, in a vertical position, which was high enough so that it would be above the height of the light, in your opinion from your examination would you say that that light could be seen from ahead or nearly so?

MR. HAYDEN: I object to that as incompetent. The basis has not been sufficiently laid for the hypothetical question in the testimony in this case—any actual testimony in this case.

(Q. (Mr. Lawrence Bogle) In other words, Mr. Erismann, would a stanchion placed eight feet forward of the light-screens, flush with the deck, in a vertical position, twenty feet high, obscure the line of light?

A. From my observation——

MR. HAYDEN (Interrupting) Same objection, please.

Q. (Mr. Lawrence Bogle) That is all right, go ahead, answer.

A. From my inspection, as near as I could tell such a stanchion would interfere and diverge its rays from a point two miles ahead where both lights can be seen as required by law.

MR. HAYDEN: I move to strike out the part of the answer commencing with "from a point two miles ahead" as not responsive to the question, and this witness has not shown that he is acquainted with the law

or is an expert in the law, that he can testify as to what the law is. The witness is not qualified.

Q. (Mr. Lawrence Bogle) Mr. Erismann, was it your opinion at that time, from your examination, that this light could be seen from a point two miles directly ahead?

MR. HAYDEN: I object to that as leading and suggestive.

A. You could not see it from two miles—a point two miles ahead.

Q. (Mr. Lawrence Bogle) About how much would this ray of light be diverged from a line directly ahead, how much would this stanchion throw it off, in your opinion?

MR. HAYDEN: I object to that as no foundation in the testimony is laid for any such speculative answer, and on the ground that the answer is speculative.

A. From measurements, it would be about four or five degrees, in this particular instance, with a stanchion eight feet ahead of the light in its relative athwartship position.

Q. (Mr. Lawrence Bogle) So that there would be an area ahead where neither light could be seen?

MR. HAYDEN: I object to that as leading and suggestive.

A. Shall I answer that question?

Q. (Mr. Lawrence Bogle) Yes.

A. Yes, there would be an area in which the lights could not be seen.

Q. Mr. Erismann, did you make a careful examination of the nature of the damage to the steamer "Strathalbyn"? A. Yes, sir.

Q. I wish you would state, briefly, just what the nature of the damage suffered by the "Strathalbyn" was?

A. The plates on the port side were bent across the center line—fore-and-aft center line of the ship, towards the port side, and where those plates had been fastened to the stem they had broken away from the stem and the plates on the starboard side were crumpled up, with portions of the stem still attached, back on the starboard side about 30 feet. The deck-beams of the forecastle

head were broken and bent, some portions of which adhered to the wreckage which overhung the starboard side, and one or two beams about 25 feet aft of the stem, at a distance approximately of five feet from the center line towards the starboard side, had been bent aft towards the wreckage. The frames on the starboard side had been broken for over five frame spaces, canted with the wreckage. Those further aft had been left intact or in position, the rivets having been sheared off.

Q. How far above the water, Mr. Erismann, was the stem of the "Strathalbyn" broken?

A. Five feet above the water line, or to a point corresponding to the 30-foot draft marks, the plates were in their original position, the stem apparently having broken just above and gone aft with the wreckage which was seen on the starboard side.

Q. That portion of the stem up to the point of the break, was that injured to any extent, did it show any damage—that is, up to the 30-foot water mark, as I understood you to testify?

A. The stem apparently was intact, the plates having given way about five feet above the water line, the port side having bent over at that same distance, the plate edges having given way, leaving the lower plates intact, meaning by "intact" there that they were in their original position.

Q. Mr. Erismann, from your examination of the nature of the damage to the steamer "Strathalbyn", could you tell from what angle these two vessels must have struck, if, prior to the collision, the steamer "Strathalbyn" was drawing approximately 23½ feet and had a six-degree list to starboard, and that the steamer "Virginian" was on an even keel and standing considerably higher out of the water than the steamer "Strathalbyn"—from those facts and the nature of the damage, could you tell about the degree of the angle of contact at the point of collision between the two vessels?

MR. HAYDEN: Just a minute. Have you ever seen two vessels come together?

MR. LAWRENCE BOGLE: Oh, let him answer my question. You will get a chance to cross examine.

MR. HAYDEN: Never mind.

THE WITNESS: Who am I to answer?

Q. (Mr. Lawrence Bogle) You are to answer my question. You can answer his on cross examination.

MR. HAYDEN: Then I want to put in an objection, if you refuse to answer my question, on the ground that I have a right to determine whether this witness is qualified to make an answer to that question.

MR. LAWRENCE BOGLE: I have asked him whether from his examination and from his knowledge of these facts which have heretofore been testified to, if he could tell.

MR. HAYDEN: I object also on the ground that the question is not a proper hypothetical question and the witness has not shown from his experience that he is able to answer it as an expert witness.

Q. (Mr. Lawrence Bogle) Has it been a part of your business and experience to construct vessels and to repair them? A. It has.

Q. You have had considerable experience in that business? A. I have.

Q. Answer the other question now.

MR. HAYDEN: The same objection, as not qualified to testify about the question that has been asked. The question is not a proper hypothetical question, and does not contain all the facts and circumstances on which any witness should base an expert opinion.

Q. (Mr. Lawrence Bogle) From those facts, could you tell about the angle of contact? A. Yes.

Q. Just state in your opinion the angle at which these two vessels must have come together to have caused those injuries to the "Strathalbyn" under those circumstances?

MR. HAYDEN: Same objection, as incompetent.

A. From an inspection of the damage, the latitude is not very great as to exactly what happened; the boats must have come together very nearly headon.

Q. (Mr. Lawrence Bogle) I wish you would just explain your answer, Mr. Erismann?

MR. HAYDEN: Same objection.

A. That bending of the starboard plates and the crumpling up—the bending of the port plates and the crumpling up of the starboard plates could have only

been accomplished by a vessel hitting the "Strathalbyn" on the port side at a very small angle with the center line of the "Strathalbyn".

(Mr. W. H. Bogle, of proctors for respondent, claimant and cross-libelant, here appeared.)

(Last question and answer read.)

Q. (Mr. Lawrence Bogle) Could you tell, from your examination, Mr. Erismann, about where the point of contact between the two vessels was?

A. The point of contact was at the top of the forecastle deck of the "Strathalbyn".

Q. About how far from the top of her stem?

MR. HAYDEN: I object to that. The witness has not shown that he knows anything about where the stem of the "Strathalbyn" was.

Q. (Mr. Lawrence Bogle) Could you tell, from your examination, about where the point of contact was, Mr. Erismann?

A. It was at the level of the forecastle deck.

Q. I will ask you to examine that photograph and state whether or not that correctly represents the nature of the damage to the steamship "Strathalbyn" as it appeared at the time you examined it? (Handing claimant's exhibit "5-6" to witness).

A. Yes, it does.

Q. I wish you would explain in detail how that damage was caused by a collision at the angle which you stated.

A. How this damage was caused, is the question?

Q. Yes.

MR. HAYDEN: Same objection, that he has not qualified or shown that he is qualified.

A. The angle of list of the "Strathalbyn" to the starboard side, being hit by the bow of the "Virginian" on the port side immediately abaft the stem, the lower part of the stem of the "Strathalbyn" was on the starboard side of the bow of the "Virginian", the point of contact being at the level of the forecastle deck, which is of lighter material than that around the main deck, and by reason of the list being more or less unsupported, the bow of the "Virginian" impinged on the stem about at the level of the forecastle deck, in the vicinity of the

light forecastle deck plating, which gave way, the deck-beams of the forecastle deck and of the main deck started, the stem of the "Virginian" having broken and impinged on the starboard side plating of the "Strathalbyn", crumpled it before the stem of the "Virginian" as she collided. The plating in the vicinity of the water line of both ships rubbed together and fendered the "Virginian" off from following its true direction through the "Strathalbyn's" forward end. For the distance of 30 feet the plates were torn off and crumpled, at which point the momentum of both ships became nil.

Q. Does that point show on the photograph?

A. Not in this photograph; that is, the point shows, but without any ability to judge the distance back from the stem; but it was about somewhere in the neighborhood of 30 feet.

Q. Is this the point where the momentum of the two vessels stopped? (Indicating).

MR. HAYDEN: Objected to as leading.

MR. LAWRENCE BOGLE: He has testified to that point. You can cut that out.

Q. (Mr. Lawrence Bogle) I will ask you if you can show the point on that photograph where you have testified the momentum of the two vessels was stopped?

A. It was somewhere in that neighborhood, a certain amount of tearing and bursting accompanying the collision.

Q. Mark it "A" about the point.

A. Mark the point there "A" on the photograph?

Q. Yes. A. (Witness does as requested).

Q. Will you explain how the port side of the "Strathalbyn" was carried around to starboard?

A. By reason of the impingement of the stem of the "Virginian" on the forecastle edge, which was unsupported to resist the direction of the blow.

Q. Mr. Erismann, did the damage to the "Strathalbyn" show any cut made by the colliding vessel?

A. The general direction of the vessel cutting into the "Strathalbyn" was generally shown.

Q. Was the damage to the "Strathalbyn" in the nature of a cut or a tear or a crumple?

A. The starboard side plates crumpled; the deck

tore and buckled—or buckled and tore, and the port plates bent.

Q. Mr. Erismann, could this damage have been caused to the "Strathalbyn" if the vessels had come together at any other angle except at an angle almost directly ahead?

MR. HAYDEN: I object to that on the ground that this witness is not qualified to testify.

A. Any other—any blow delivered at an angle very little different than the angle as about indicated by the damage would have caused denting of the plate surfaces and dealt a glancing blow.

CROSS EXAMINATION.

Q. (Mr. Hayden) Mr. Erismann, don't you imagine that these starboard plates on the forecastle head of the "Strathalbyn" would bend before they broke?

A. Depending altogether on the nature of the blow.

Q. I presume they bent before they broke, didn't they? A. Depending on the nature of the blow.

Q. I am asking you if they did not bend before they broke? A. That is almost impossible to answer.

Q. Is it?

A. The question was that they bent before they broke?

Q. Yes, the starboard plating carried away?

A. The starboard plating carried away?

Q. I mean this plating right in here, did that bend before it was broken off, right along that line marked "B"? A. Yes, this side bent.

Q. Taking this line "B" now on claimant's identification "5-6", would you say along that line that those plates had bent before they were broken, or not?

A. Along that line the port plates are bent.

Q. Did they bend before they broke, or did they break before they bent?

A. They show there that they are simply bent.

Q. Along the line that I have indicated, the line "B", are not those plates broken?

A. Yes; they are bent also, and they broke in certain places.

Q. Now, the places that they broke in, did they

break before they bent or were they bent before they broke, by this collision?

A. I can't answer that question.

Q. Did you take any measurements to determine what the angle was from this point marked "C" to the point marked "A" by you, taking the amidship line of the vessel as the base line?

A. I was not allowed to take any measurements.

Q. So you don't know what the angle was between the point marked "A" by you and the pointed marked "C"? A. The distance and angle are different.

Q. I say, taking the base line, taking the center of the ship as the base line—

A. (Interrupting) Yes.

Q. (Continuing) —what angle was it?

A. What angle was what?

Q. What angle did you get up in here at the point "C", if you draw a line one side of your angle from the point marked "A" to the point marked "C", taking the center of the ship, a line running from the bow of the ship to the stern of the ship? A. Take the angle?

Q. Yes. A. No sir.

Q. Do you know what it was? A. No sir.

Q. Isn't it a matter of fact that there would have been more tendency to have been a glancing blow if these vessels struck head-on than there would be if they struck nearer at right angles to each other?

A. Will you please ask that question again?

(Question read.)

A. It would have been a glancing blow—

Q. (Interrupting) You can answer that by "Yes" or "No" I think, Mr. Erismann.

A. Well, I would like to answer it the other way, if I may.

Q. If you will, answer it "Yes" or "No", one way or the other; then explain.

A. Well, just read the question again.

(Question read).

A. A more glancing blow head-on than at right angles, is that what you want me to answer?

Q. Yes.

A. More—they would have hit a glancing blow had they met head-on. Now, can I explain what I mean?

Q. Yes, certainly. A. At least on a more—

MR. LAWRENCE BOGLE: (Interrupting) Yes.

A. The angle of heel on the "Strathalbyn"—the list of the "Strathalbyn" prevented the contingency which you state.

Q. (Mr. Hayden) They could not have struck head-on then?

A. They hit head-on, but owing to the list of the "Strathalbyn" and the light nature of the forecastle plating—side plating, the stem of the "Virginian" impinged on the plating and broke it and bent it or bent and broke it, you see.

Q. Now, do you mean to say that the "Strathalbyn" was struck directly head-on by the "Virginian"?

A. At a small angle.

Q. What do you mean by a small angle?

A. Oh, an angle of two, three degrees.

Q. No more?

A. Not much more; might be a little more.

Q. How much more?

A. Well, with a limit, I should say, of eight degrees.

Q. Eight degrees? A. Eight degrees.

Q. Could not be any more than eight degrees, in your opinion? A. I don't believe so, no.

Q. Have you ever measured the bow of the "Virginian"? A. No sir.

Q. Do you know how much above the water line the bow of the "Virginian" was at the time of this accident? A. Yes sir.

Q. Personally know that? A. I made inquiries.

Q. Who told you?

A. I asked for the owners—from the owners of the "Virginian".

Q. Who did you ask? A. Mr. Roberts.

Q. What did he say?

A. I asked him for the draft of water, approximately, of the "Virginian" about that time.

Q. The draft? A. The draft forward.

Q. What did he tell you?

A. He told me from 17 feet to 18 feet.

Q. Did he tell you how high above the water the bow of the "Virginian" was? A. No sir.

Q. Did you estimate that?

A. I laid it out without measuring it.

Q. Do you mean to say that if the "Virginian" had struck the "Strathalbyn" at 30 degrees or 40 degrees, that she would not have gone through her bow from the port side over to the starboard side?

A. Through whose bow?

Q. Through the "Strathalbyn's" bow?

A. If she had hit her at an angle of 30 degrees?

Q. Yes. A. To her fore-and-aft center line?

Q. Yes.

A. That is a question of strength of materials. It would have dented the plate both sides.

Q. If he had struck her in the same position that this damage is shown, on those angles, do you mean to say it would not have cut through the "Strathalbyn's" plating?

A. If she hit on the same angles as are shown there, it would have produced the same damage as shown on the photograph.

Q. I am speaking about 30 or 40 degrees?

A. Your question is that had the "Virginian" struck the "Strathalbyn" at an angle of 30 degrees, would the damage have been as that damage is?

Q. Would she have cut through—

A. (Interrupting) Yes.

Q. (Continuing) —the port plates and carried over into the starboard side of her? A. No.

Q. She would not have done it?

A. She would not.

Q. Why not?

A. Because the plates were crumpled on the starboard side, but those plates were pushed by the stem of the "Virginian" at an angle very near their surface and burst the rivets and crumpled the plate as it went.

Q. At an angle very near the surface. What surface? A. The surface of the plating?

Q. And what is that determined by?

A. That is determined by the lines of the boat.

Q. Yes. At the place of the plating?

A. At the place of the plating, yes.

Q. Where the plating comes in contact with the stem?

A. The mean would have to be taken—no sir, the plating is laid—

Q. (Interrupting) Where the plating would come in contact with the stem of the "Virginian"?

A. Where the plating would come in contact with the—

Q. (Interrupting) That would cause the crumpling, wouldn't it?

A. The line of least resistance in plating, which is a warped surface, would give the direction—a mean between the top and the bottom of the broken area.

Q. Is it your idea that the stem of the "Virginian" followed along the frames of the "Strathalbyn" and cut the rivets in the plating? A. No sir.

Q. What is your idea about that?

A. That the stem impinged on the plating—

Q. (Interrupting) Where?

A. (Continuing) —and the rivets were burst. The stem impinged across the port corner of the stem and broke it, and it is the plates, as it was being crumpled and pushed aft, that burst the heads of the rivets off.

Q. So that the stem of the "Virginian" might have been a considerable distance away from the frework of the "Strathalbyn" and caused this damage?

A. No, it could not be a very great distance away.

Q. How far would you say?

A. It would have followed at a distance corresponding to the line of a plane passed vertically in the direction of the collision.

Q. You have got to use different terms, I can't understand you, I don't know what you mean. Please explain it in another way, will you?

A. The plane—the center line plane.

Q. What do you mean by that?

A. Of the "Virginian," the center line plane. I mean an imaginary surface—vertical surface, without thickness, which would project indefinitely in front of the "Virginian's" bow and the stern of her; simply the

surface which would separate the "Virginian" in two, the center line.

Q. That would not necessarily correspond with her actual center line from stem to stern, would it?

A. Absolutely, sir.

Q. Then you mean the center line of her from stem to stern, when you speak about the plane of her?

A. Yes.

Q. All right, now go ahead.

A. Now that plane, before the—

Q. (Interrupting) That is an ordinary line, isn't it? A. Yes.

Q. Just like the stem of her?

A. Yes. That line, projected before the collision, cut the canted edge caused by the list of the "Strathalbyn"—cut right through it; when the stem came on it broke the corner off and plowed right along, bending the frames or the beams and crumpling the plating. Can I make a sketch of this?

Q. Yes, I would like to have a sketch of it, I would like to get your ideas.

A. The "Strathalbyn" here; that is looking right straight at her (witness drawing); she had a list of I believe it was six degrees.

Q. This is the "Strathalbyn," marked "S" here?

A. Yes.

Q. Now, all right.

A. Now, the bow of the "Virginian" was vertical. This point is supposed to be there because this point is here, this being the "Virginian" and this the "Strathalbyn." (Indicating.) Now owing to the list—

MR. LAWRENCE BOGLE: (Interrupting) Mark the "Virginian" and "Strathalbyn."

A. (Witness drawing.) On this side and the stem of the "Virginian" was over here, and the course or the direction of this vessel was here (indicating) and the "Virginian" at comparatively a small angle or straight on, but the angle is small with this angle here. (Indicating.) Now, the point of contact was at this level here (indicating), taking the bows this way, of both boats, you see, the overhanging bow of the "Virginian," see—

MR. LAWRENCE BOGLE: Mark the point of contact.

A. It occurred at a point no higher than the top of the forecastle deck of the "Strathalbyn."

MR. LAWRENCE BOGLE: Mark that "Point of contact."

A. (Witness marks) Struck here. (Indicating.)

MR. LAWRENCE BOGLE: Mark that too.

A. (Witness marks "Point of contact.") This here is the line of the sheer strake of the "Strathalbyn" (indicating), and this is the forecastle plating here (indicating), which is lighter, being a superstructure. The stem here—plating coming along here on the "Strathalbyn," (indicating); the plating here is where the main top member of strength is located, and the stem overhanging.

MR. LAWRENCE BOGLE: Mark that point between which the main strength is located.

A. This is the sheer strake, main "sheer strake top strength member." The stem of the "Strathalbyn" being this way and the stem of the "Virginian" being there—

MR. LAWRENCE BOGLE: Mark it.

A. (Witness marking) This plating and the stem here. (Indicating.)

MR. LAWRENCE BOGLE: Mark that.

A. "Point of contact" of—well, I have got that marked up here.

MR. W. H. BOGLE: Well, you were saying "here."

A. "Point of contact," that is all right. Now, the first plating touched by the stem of the "Virginian" was the forecastle plating, which was lighter, and that bent; the leverage exerted on the stem, it being bent over the side, the bow of the "Virginian" impinged upon it and broke it in the vicinity of the water line and started right through here. (Indicating.) Now, the center line of the "Strathalbyn"—

Q. (Mr. Hayden) Mark the line she started through. This line marked with an—

A. (Interrupting) Arrow head.

Q. (Continuing) —an arrow head.

A. Is the general direction of the course of the "Virginian." As the boats made their impact, caused their center lines to diverge and the mean line of the surface of the plating was approximately here. (Indicating.)

Q. What do you mean by "mean line of the surface of the plating"?

A. She was broken here (indicating), and she was broken there (indicating). You see that there is considerable flare to the side of the vessel, and this mean line extended somewheres in about this vicinity (indicating).

Q. Half way between the top of the break and half way between the bottom of the break, is what you mean?

A. Yes.

Q. All right. A. And that along this surface—

MR. LAWRENCE BOGLE: What is that? Mark it.

A. That is "mean line of broken plates vertically" would be about the line of the center line plane of the "Virginian," produced; that by reason of being hit near the forecastle deck and the stem of the "Strathalbyn" being at an angle, the plates were in the worst condition to withstand a blow locally and that the plates gave way, crumpling along a line closely approximating the mean line of broken plates vertically.

Q. (Mr. Hayden) Where did the bow of the "Virginian" go?

A. It followed approximately the line of the plane, with such alterations as would be caused by the momentum.

Q. Mark it on that drawing that you have got, where the bow of the "Virginian" went, mark the line of the bow of the "Virginian" as it progressed.

A. Well, you won't be able to see anything through here.

Q. No, just draw a line showing the direction of the bow of the "Virginian" from the position it is in now until it stopped.

A. It is marked on this line here—

Q. Now just—

MR. LAWRENCE BOGLE: Let him answer.

Q. (Mr. Hayden) Do I understand that this is the line of the bow of the "Virginian"?

A. That is the plane that I was talking to you about.

Q. Is that where it actually went? Not the plane of it, not an imaginary line extended forward, but I want to know where the bow of the "Virginian" actually went after she struck the "Strathalbyn"?

A. No. I can show it approximately.

Q. Well, show it.

A. With this center line changed over in this direction, traveling in this direction.

MR. LAWRENCE BOGLE: Mark that.

A. (Witness marking) "Travel of 'Strathalbyn's' center line while in collision."

Q. (Mr. Lawrence Bogle) That is "Travel of S. center line—"

A. Yes, "Strathalbyn's" center line. The boat drew ofl then in this position and the bow of the "Virginian" naturally assumed a slight angle as it proceeded, and that angle followed somewhat to lie tangent to this line that is at a distance equal to the touching plates on the mean line at the height of this surface here on this boat (indicating), and the alteration would depend entirely on the distance of the surface — outer surface of the "Virginian" with the center line. I could not tell how much that was, but the tendency of the center line would be to shift over like that, and this one to come here (indicating), and—

Q. (Mr. Hayden, interrupting) Mark on this the center line of the "Virginian," so that we will have that.

A. (Witness marks) This is the mean center line, and this is the development of it as caused by the—

Q. (Interrupting) Now, we are getting back to the question I asked you before: If the bow of the "Virginian" did not follow the framework on the "Strathalbyn"—between the plating of the "Strathalbyn" and the framework of the "Strathalbyn"?

A. Between the plating and between the framework?

Q. If the bow of the "Virginian" did not follow the line between the plating and the framework of the "Strathalbyn"—did it or didn't it?

A. The plating and the framing face?

Q. Yes, the stem of the "Virginian", did it follow that line?

A. You are confusing the stem and the frames.

Q. I mean the stem of the "Virginian"? A. Yes.

Q. Did that follow the outside line of the plating of the "Strathalbyn" and following between the plating of the "Strathalbyn" and the frames of the "Strathalbyn"? A. No.

Q. The stem did not? A. No.

Q. The stem of the "Virginian" did not follow in between the plating of the "Strathalbyn" and the framework of the "Strathalbyn"? A. No.

Q. What happened to it, where did it go?

A. It broke these frames here (indicating), and then the rounding side touching up against here, touching up against the forward end of the wreckage so shifted the center lines of both vessels that the sides came tangent toward the after end of the damage.

Q. Did you look at the broken frames in the bow of the "Strathalbyn"? A. Yes.

Q. Can you tell, from those broken frames, where the stem of the "Virginian" struck them or pierced them as it was going through? A. No sir.

Q. Would the frames break at the point of contact with the stem of the "Virginian"?

A. They might and they might not, because in structures which are plated over you might get the blow to the frames or they might break as the result of the plating being torn or pushed away.

Q. How many feet would you say that the bow of the "Strathalbyn" would be deflected—to port it would be, wouldn't it?—to port, would that be the direction of the deflection of the bow of the "Strathalbyn"?

A. The deflection would have been to starboard on the "Strathalbyn".

Q. To starboard?

A. Yes. The blow was struck on the starboard side?

Q. Struck on the port side, I understand.

A. The port side and towards the starboard side.

Q. Yes. A. Yes.

Q. And then how would the head of the "Strathalbyn" have swung?

A. Swung—what do you mean, relatively to the water, or what?

Q. Relatively to the water, yes.

A. The blow struck on the stem and broke the stem, started the plating; then the side of the "Virginian", as the stem pushed its way through, came in contact with the plating of the "Strathalbyn" at the water line and worked the head of the "Strathalbyn" to port.

Q. To port?

A. Yes, worked the head, that is, turned the vessel a ilttle to port.

Q. And then she would not have gone to starboard in the water? A. No.

Q. If she did go to the starboard in the water, then it must have been struck at a greater angle?

A. What is that?

Q. If the head of the "Strathalbyn" was shoved to starboard in the water, she must have been struck at a greater angle than you have mentioned?

A. If the bow of the "Stratahlbyn" had gone to starboard she would have what?

Q. She must have been struck at more of an angle than you have mentioned?

A. Yes, exactly. You see—

Q. Now—

A. (Continuing) —that—

Q. (Interrupting) If she had been struck at this last angle you put down here, she would have shoved her to starboard, would she? A. Yes.

MR. HAYDEN: All right. Just mark this, please—

MR. LAWRENCE BOGLE: Have you marked the one before it?

MR. HAYDEN: The line "A" is the line which this witness says would have shoved the bow of the "Strathalbyn" to starboard if she had been struck in that direction.

THE WITNESS: Yes sir.

MR. HAYDEN: I want to introduce this in evidence as libelant's exhibit "V-1."

THE WITNESS: Yes, that is all right.

Paper referred to was marked libelant's exhibit "V-1," same being attached hereto and returned herewith.

MR. HAYDEN: For the purpose of identifying the witness's testimony on cross examination, we will offer this, marked "V-2."

Paper referred to was marked libelant's exhibit "V-2" by the Notary, same being attached hereto and returned herewith.

Q. (Mr. Hayden) This little picture, that Mr. Bogle showed you, marked claimant's exhibit "5-6," and for which the larger picture marked claimant's exhibit "5-6" was substituted, is the picture that you said fairly represented the "Strathalbyn" at that time you took it? A. Saw it.

Q. At the time you saw it.

MR. HAYDEN: We will introduce it in evidence, as libelant's exhibit "V-3."

Picture referred to was marked libelant's exhibit "V-3" by the Notary, same being attached hereto and returned herewith.

Q. (Mr. Hayden) Referring now to claimant's exhibit "5-6" and the line marked "A," which as I understand you is the point at which the vessels came at rest—

A. (Interrupting) No sir, I didn't say that. It is the extent of the damage.

Q. Oh. You don't mean, then, that to indicate the point at which the bow of the "Virginian" ceased to move forward?

A. No, I can't tell that. It is the damage.

Q. At this limit of damage here, marked "A," how far, in a line drawn at right angles to the fore-and-aft center line of the "Strathalbyn," would be the stem of the "Virginian" away from the break in this damage or the point that you have got here marked "A"?

A. I have not measured the distance, but from seeing the "Strathalbyn" and understanding that the "Virginian's" side was unbroken, the distance of the center line of both boats at the end of the collision, as near as such things can be given, would be the sum of the distance between the rubbed surface of the plating at the

vicinity of the water line in the "Strathalbyn" and the distance between the rubbed surface of the plating on the "Virginian" and the center line at that point.

Q. Well, that is not very clear to me, but I am asking the plain simple question: How far would the stem of the "Virginian" be to starboard of the point "A" when it got up opposite that point?

A. I have not measured it.

Q. Well, it would be some distance away from it, though, wouldn't it. A. Certainly.

Q. What would you estimate the distance would be?

A. I could measure it, provided I had the lines of the two vessels, but I could not estimate it.

Q. The point "A," then, does not indicate where the bow of the "Virginian" stopped in the "Strathalbyn"?

A. No sir.

Q. The bow of the "Virginian" might have gone considerably beyond that point might it not?

A. No sir.

Q. Could it have gone a less distance than that point? A. Yes.

Q. What is your opinion whether it went a lesser distance than that point, or went a greater distance—that is, the stem of the "Virginian"?

A. The stem of the "Virginian" stopped this side of the break.

Q. Stopped this side of the break? A. Yes.

MR. LAWRENCE BOGLE: Which side do you mean?

Q. (Mr. Hayden) Towards the bow.

A. I mean it must have been between this point and the bow.

Q. Do you remember how this plating hung, whether it hung aft or forward of the break?

A. The plating hung over the water and hung on a vertical line corresponding to the last frame to which it was riveted.

Q. Yes, but was the outer edge of the plating forward or aft of the line of that beam—the line of the beam of the ship at the point where it connected with the ship?

A. It was slightly aft; its weight had swung, it was

elastic, there was nothing to fasten it or hold it and it might swing, might swing it an inch or two further forward or further aft.

Q. Well, wasn't it considerably further aft?

A. Well, it was not forward.

Q. Doesn't that photograph number "5-6" show it aft? A. Yes.

Q. Considerably aft? A. No.

Q. Let me see this other one, if you please. Does not this photograph "V-3" show it hanging considerably aft?

A. Shows it almost normal to the surface of the vessel at that point.

Q. How many times have you been in collision with steel ships of the size of the "Strathalbyn" and "Virginian"?

MR. LAWRENCE BOGLE: I object to that as immaterial.

A. Never been in a collision on a vessel of the same size as the "Virginian" and the "Strathalbyn," in a collision.

Q. How many collisions have you been in where the vessels came together head-on and one vessel had a list of six and a half degrees and the other was perpendicular.

MR. LAWRENCE BOGLE: I object to that as immaterial.

A. Never been in such a collision, under the circumstances.

Q. (Mr. Hayden) Have you ever gone to sea?

A. Yes sir—not for pay; I have gone as a passenger.

Q. As a seafaring man?

A. Yes sir, I have been to sea as an amateur or a passenger on a vessel.

Q. What kind of a vessel, yachts?

A. Yachts of various kinds and sizes.

Q. What is the biggest yacht you have ever been to sea on?

A. Oh, 60 feet, 70 feet.

Q. You never have been to sea in—never have had

anything to do with the navigation of a large vessel, though, have you?

A. No; that is, I have been in the pilot house of large and fast vessels when they were on their regular run.

Q. Yes, but you never had any training as a sailor?

A. No what?

Q. And you never had any training as a sailor either, did you—master?

A. No, no master, no examination; any more than a man picks up by being around the water all his life.

RE-DIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Mr. Erismann, if the "Virginian" had struck the "Strathalbyn" on the port side, at an agle of thirty to forty degrees, and the momentum had been sufficient to cut through to the starboard side of the "Strathalbyn," would there have been any crumpling of the plates on the starboard side of the "Strathalbyn"?

A. There would have been no crumpling on the starboard side.

Q. Could there have been any crumpling of the plates, in the manner you found the plates on the "Strathalbyn" crumpled, by any kind of a blow except one striking practically in the same direction, lengthwise of the plates?

MR. HAYDEN: I object to that as leading and suggestive. A. No.

Q. (Mr. W. H. Bogle) If the engines on the "Strathalbyn" had been reversed immediately preceding the collision, say within thirty to forty seconds, would it have had any effect upon the direction of the "Strathalbyn" at the moment of the collision?

MR. HAYDEN: I object to that on the ground that it is leading, and on the further ground that there is no testimony in the case to lay a foundation for such a question, and on the further ground that this witness is not qualified.

A. The answer is, no.

Q. (Mr. W. H. Bogle) What would be the effect upon the course or direction of the "Strathalbyn" from reversing her engines?

MR. HAYDEN: We object on the ground that the witness has not shown he is qualified.

A. In single-screw vessels, when the engine is reversed the stern goes to port.

Q. (Mr. W. H. Bogle) About how long would it take, in the case of a vessel such as the "Strathalbyn," and loaded as she was on this occasion, for the reversal of the engines to take effect in changing her course?

MR. HAYDEN: Same objection. The witness has not shown he is qualified.

A. Some considerable time.

Q. (Mr. W. H. Bogle) Can you express it any more definitely?

MR. HAYDEN: Same objection, on the ground that the witness is not qualified.

A. Ships vary on the time, depending on the power and depth of lading.

RE-CROSS EXAMINATION.

Q. (Mr. Hayden) What did you mean when you said that the superstructure of the "Strathalbyn" tumbled home?

A. I mean that the breadth of the vessel about the water line is greater than that at the height of the structure at any point above.

Q. You did not mean that the upper bridge, referring to this bridge marked "C" in claimant's exhibit "5-6," is any narrower than the bridge marked "D"?

A. It is.

Q. Do you know how much?

A. No sir. The general practice is to follow a fair line from the water—

Q. (Interrupting) I don't care about general practice, I am talking about this ship?

A. I didn't measure that ship.

Q. You don't know, then, if a line dropped down from the outer edge of the bridge marked "C," when the ship was on an even keel, would strike the outer edge of the bridge marked "D"? A. Yes, it would.

Q. It would strike it?

A. Yes, it would strike it, because by—

Q. (Interrupting) One is right above the other, do you mean to say?

A. They tumble in.

Q. Do you know that bridge "C" tumbles in from bridge "D"—that is what I am asking you? A. Yes.

Q. You swear that is the fact? A. Yes.

Q. All right. If you are mistaken on that fact, are you willing to think that you are mistaken in any other fact in this case that you have testified about?

MR. W. H. BOGLE: I object to it as incompetent, irrelevant and immaterial.

A. I would like to say something without the testimony, but—

MR. W. H. BOGLE: (Interrupting) No.

THE WITNESS: Can I say something, Judge?

MR. W. H. BOGLE: No, there is no use taking up time, Mr. Erismann.

THE WITNESS: I would like to say, I called up general practice in the building of ships.

MR. HAYDEN: Yes, that is all right. I move to strike it out as not responsive to the question.

(Witness excused.)

S. B. GIBBS, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary, to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. W. H. Bogle) State your name, age, residence and occupation.

A. S. B. Gibbs; residence, Seattle; marine surveyor.

Q. How long have you been following the occupation of a marine surveyor?

A. A little over ten years.

Q. In Seattle all that time? A. Seattle, yes.

Q. For what underwriter do you act as marine surveyor. A. San Francisco Board.

Q. Have you represented them during all the time mentioned?

A. I was not representing any underwriters in this case at all.

Q. No, but during the ten years?

A. Oh, yes. I thought you referred to the—

Q. (Interrupting) Do you, as a marine surveyor, examine injuries to vessels that have been damaged by collision or stranding, or otherwise? A. I do.

Q. And prepare the plans and specifications for repairs and superintend the repairs? A. Yes.

Q. Were you ever aboard the steamer "Strathalbyn"? A. I was.

Q. On how many occasions?

A. Oh, I think on three occasions.

Q. At whose instance?

A. I went up there first at the request of the time charterers of the "Strathalbyn," to see about the cargo and—

Q. (Interrupting) Was that after the collision?

A. That was after the collision. And once I went up at the request of Mr. Gardner, of San Francisco.

Q. Who is Mr. Gardner, who does he represent?

A. I think he was a surveyor on the "Virginian." He is surveyor to Lloyd's agent, I believe, in San Francisco.

Q. Was the "Strathalbyn" loaded at the time you were on board? A. She was—the first time.

Q. In the same condition, so far as her load was concerned, that she was in at the time of the collision?

A. Just the same.

Q. Did you notice the location of the lights on the "Strathalbyn"? A. Yes.

Q. Did you examine her sight lights?

A. I did not examine her side lights. I examined the location of the lights and the range of the lights after the stanchions were in place.

Q. I will get you to state whether those side lights were to any extent obscured by the deck load and stanchions holding the deck load on the "Strathalbyn" at the time you wree aboard?

MR. HAYDEN: I object to that as leading.

A. I sighted along the stanchions and range of the lights and I judged there was a point directly ahead that the lights could not be seen, a little on each bow.

Q. Did you take sufficiently accurate measurements to be able to determine the distance on each side of the bow at which these lights would be obscured.

A. No, I did not take any measurement.

Q. At the time you were on board were you representing either of the parties to this litigation?

A. No, not at the time I looked at the lights—I looked at the range lights, I was not representing anybody.

Q. Did you examine the injuries to the "Strathalbyn"? A. I did.

Q. State in a general way of what they consisted.

A. The stem of the "Strathalbyn" was broken and twisted from port to starboard; the frames and plates on the starboard bow were torn adrift for a distance of about 30 feet and the plates were hanging out—standing out at nearly right angles to the ship.

Q. What was the condition of those plates?

A. Badly crumpled.

Q. Did you ever examine the "Virginian" after the collision. A. I did.

Q. Did you examine the injuries on her.

A. I did.

Q. Captain, can you state, from your examination of these two vessels and the injuries they sustained, the approximate course of the two vessels at the moment of collision?

A. I should say that they must have been end-on, or very nearly so.

Q. Did you notice whether the "Strathalbyn" had a list, or not?

A. I didn't take particular notice of the list. I was informed that she did have a list.

CROSS EXAMINATION.

Q. (Mr. Hayden) What lights, captain, did you look at?

A. I did not look at the side lights. I looked at the light-screens where the lights were.

Q. Were there any lights in the light-screens at the time you examined it? A. Not that I recollect of.

Q. How long was it before the vessel went to sea that you made this—

A. (Interrupting) When they were putting the deck load on, to the best of my recollection; I am not positive about that.

Q. Had they finished putting the deck load on?

A. I don't think they had quite. No, I know they had not.

MR. W. H. BOGLE: There was one other question I wanted to ask him, I forgot it.

MR. HAYDEN: All right.

BY MR. W. H. BOGLE:

Q. In your business, captain, do you survey vessels loaded with lumber? A. I do.

Q. How many vessels, on an average, loaded with lumber, do you survey during a year?

A. Steam and sail, about—I should say about seventy-five a year, or a hundred.

Q. Did you notice whether the stanchions on the "Strathalbyn" were standing straight or leaning, tumbled in or tumbled outward?

A. As I recollect it now, they were standing straight.

Q. What is usually the effect upon the stanchions of loading lumber of the quantity that was loaded on the upper deck of the "Strathalbyn"?

A. The effect on the stanchions?

Q. Yes.

A. The tendency is to spread out a little, particularly if they have a list; if the vessel has a list, the cargo is very apt to sag a little.

Q. Is there any way by which that can be absolutely prevented? A. Not on a steamer.

BY MR. HAYDEN (resuming):

Q. Isn't it a rule, captain, or do you remember on this vessel whether or not the stanchions tumbled home to some extent?

A. I don't recollect the fact they tumbled home, Mr. Hayden, as I was looking at them.

Q. If the stanchions did tumble home, it would have a tendency to keep the cargo more from spreading out, wouldn't it? A. Yes.

Q. Where did you stand when you say you sighted along these stanchions?

A. I stood on the bridge there, sighted in the way of the lights, and then I went on the forecastle and

sighted from the forecastle head aft and sighted aft along the stanchions.

Q. From the aft end of the forecastle?

A. From the aft end of the forecastle.

Q. How much cargo was aboard then, up to the forecastle head?

A. I don't recollect just how much cargo there was aboard at that time.

Q. Did you stand on the forecastle or did you stand on the cargo?

A. My impression is that I stood on the forecastle and sighted the stanchions. I am not quite sure of that point.

Q. Could you see the light-screen inside of the stanchions?

A. As I sighted on the outside of the stanchions, I figured that the light was obscured from the line of the stanchions.

Q. Do you remember if you could see the light-screen on the inside of the stanchions?

A. I don't recollect that.

Q. Do you recollect looking to see if you could?

A. No, I don't know as I looked on the inside. I was sighting on the outside.

Q. Did you see the light-screen at all on the outside of the stanchions, any part of it?

A. Yes, I could see a portion of the screen.

Q. A portion of the screen on this deck marked "D" on claimant's exhibit "5-6"? (Showing.)

A. The screen is out here. (Indicating.)

Q. Yes.

A. I could see the outside portion of that box.

Q. Looking from the forecastle head. A. Yes.

Q. Do you know how much of it you could see?

A. No, I don't recollect now.

Q. How far apart were those stanchions, captain?

A. Oh, I should thing they were about 16 feet apart, to the best of my recollection.

Q. Did you, in walking down the deck, notice at intervals, as you passed along towards the bridge, you could see the light-screen in between those stanchions?

A. No, I didn't look at that. I was sighting from

the point ahead and I was asked to see if I thought there was a point ahead where the light would be obscured; that is all I was asked to do.

Q. Who asked you to do that?

A. Mr. Gardner asked me to do that.

Q. Where was Mr. Gardner?

A. He was walking around the ship at the time.

Q. What was he doing here at that time?

A. I think he was having something to do with the "Virginian," if I recollect right.

Q. Prior to this accident?

A. No, I think it was after the accident; I think he was up here on some other case. I am not quite positive about that now.

Q. Well, was it Mr. Gardner who asked you to look at these stanchions on the "Strathalbyn"?

A. Yes.

Q. Prior to this accident?

A. No, it was after the accident he asked me, but I say you asked me what he was up here for; I don't know whether he was up here on purpose, on this case, or on some other case.

Q. Yes. But it was after the accident that Mr. Gardner asked you to look at the stanchions and the light? A. Yes.

Q. Well, when did you look at them, before or after the accident?

A. I looked at them after the accident.

Q. Oh. And you could see, after the accident, from the forecastle head, a portion of the light-screen?

A. A portion of the light-box.

Q. A portion of the light-box. Do you know the distance from that light-screen to the forecastle head where you were standing?

A. No, I don't, I didn't measure it. I didn't take any measurements at all.

Q. Were you standing right on the break of the forecastle head?

A. To the best of my recollection I was, yes.

Q. Was Mr. Gardner there at the same time?

A. He was.

Q. Did he look to see the lights too?

A. I think he did.

Q. If you could see the light-screens from the forecastle head, there would not be a very great space directly ahead of those screens that would not be visible, that is, the light would not be visible, would there?

A. As I recollect, the box projects a number of inches outside of the light.

Q. The light was not in the box at the time?

A. No.

Q. Did you ever see the light in the box? A. No.

Q. And you can't tell now how many inches of the box you could see?

A. No, not exactly. I saw enough of it to show or to make me feel as if the light was obscured from a certain point ahead.

Q. The light would be naturally obscured from a certain point ahead, with a stanchion sticking up above it, wouldn't it?

A. Above it and at the side.

Q. Yes, anything outside of the—

A. (Interrupting) Light.

Q. (Continuing) —outside of the block in the forward end of the screen? A. Yes.

Q. So it might obscure seeing the light directly across the bow of the vessel, having the stanchions up there, but would not necessarily obscure seeing the light directly along the side of the vessel on a line parallel with the fore-and-aft line in the center of the ship. (Drawing.)

A. Now, you mean if looking from that point right along there, that the light would not be obscured?

Q. Yes.

A. I think a portion of it would be obscured, a portion of that light would be obscured on a straight line parallel to those stanchions—a portion of that light, as soon as you drew in here. (Indicating.)

Q. And you think a portion of it would be visible?

A. Might be a portion of it visible from the outside of the stanchion on a straight line; it is possible there might be a portion of the light visible on a straight line.

Q. That would be a line that would be parallel with the fore-and-aft line drawn from the stem to the stern?

A. Yes. I say it is possible that a portion of the light—the whole of it could not be seen.

Q. If a portion of the light were seen under those circumstances, the light would be visible then ahead, would it not?

A. It might not be visible a great ways ahead, no. You mean right ahead?

Q. I mean right ahead on this line on the outside of the stanchions.

A. Yes, it is possible it might be seen a short distance; it would not be seen as far as it would be if the whole light was visible. No accurate way of determining just exactly.

Q. No accurate way, you say, of determining that?

A. Exactly, without measurement.

Q. A few degrees swinging of the head of the ship away from that line of light, however, would show up the light very clearly, wouldn't it?

A. Well, it will depend on the distance the vessel was off. It would take quite a number of degrees, if a vessel is a mile away, before you could swing it so that you could see the light.

Q. I don't quite understand that, captain, why it would make any difference in the distance.

A. If only a portion of the light is visible here, you would not see the whole light, you would have to draw the line out this way (indicating), and that would increase—as the distance between this vessel and the other vessel increased that would increase the angle upon which the light would be visible.

Q. But the angle would not have been increased any, captain, the angle would be exactly the same, whether you were ten feet ahead or two feet ahead or a thousand feet ahead.

A. It would before you saw the whole light. My conclusion there was that there was a point ahead of the vessel that the light—it was impossible to see the lights.

Q. But your conclusion was not that there was a point directly ahead of the vessel, on a line parallel with the side of the vessel, that you could not see the lights?

A. No, my conclusion at that time was that the point—that the point ahead increased as the distance

between the two vessels increased, upon which you could not see the light, that is, the radius got over a bigger surface in which the light was invisible.

Q. Did you survey this cargo for anybody?

A. I was asked at first to survey it for the American Trading Company, but afterwards it was found it was not necessary, so I did not take any further action in the matter.

Q. Was it when you were over there to survey the cargo for the American Trading Company that you looked along these—

A. (Interrupting) No, it was afterwards.

Q. It was after the collision?

A. When I went over with Mr. Gardner, after they had commenced to load the ship.

Q. After they had commenced to load the ship?

A. After they had commenced to load the ship, that I sighted along the stanchions.

Q. Oh, was that the second time, after she had been damaged and put the cargo on board of her again?

A. Yes.

Q. And it was not the first time?

A. It was not the first time. It was the second time—at the time I saw you there.

Q. Oh, yes.

A. I didn't pay attention to the light and the stanchion when I first went up there.

Q. Did you ever see the stanchions on this ship prior to the accident?

A. Yes, I saw the vessel after the accident, in Tacoma.

Q. I say prior to the accident did you see the stanchions—

A. (Interrupting) Oh, prior to the accident.

Q. Did you ever see her loaded, with the stanchions, prior to the accident? A. No.

Q. You never saw her at all prior to the accident?

A. Not prior to the accident, no sir. I have noticed a good many of them since.

Q. Did you see anything unusual with the arrangement of the stanchions when you were looking at them?

A. Oh, they were arranged about the same as they usually are on that class of steamers.

Q. Captain, did you testify about the angle at which you thought these vessels came together?

A. I said I thought they must have met nearly end-on.

Q. What do you mean by that?

A. Why, bow-and-bow, directly end-on.

Q. That is, judging from what you saw that was damaged?

A. Judging from what I saw of the damage.

Q. That is somewhat speculative, isn't it?

A. Well, I would not say so. I don't see how the damage could have occurred in any other way. I don't see how it is possible for any—for the damage to have occurred in any other way, because I know the question came up as to how this portion of the stem could remain uninjured and the rest of the stem gone on, tore this way, and when they told me the vessel had a list, why, then I accounted for it. The vessels must have been practically end-on.

Q. If the vessels struck practically end-on, your idea is at the line of cleavage the stem of the "Strathalbyn" was cut by the progressing bow of the "Virginian"; is that it?

A. That would not necessarily follow. The two vessels might have come in contact both at the same speed and the results have been the same.

Q. No, but I say the stem of the "Strathalbyn", by reason of having the list, would be cut by the bow of the "Virginian"?

A. That is it, that is it; they came together that way. (Illustrating.)

Q. If they came together that way, captain, why would not the "Virginian" have gone right straight amidships, right straight into her?

A. Well, it is possible there was a slight angle when they struck; it does not follow that the vessel should go right square into her because they came together nearly end-on.

Q. Well, if she started to break into the "Strath-

albyn" on the port side, why wouldn't she continue through on the port side, if they came on head-on?

A. Because she struck so nearly end-on there, she simply struck the upper portion of the "Strathalbyn" and plowed right along her.

Q. But that would be an indication that she struck side-on if she plowed across her.

A. It is impossible for her to have struck side-on and made that sort of a break in the vessel, that sort of damage; it would not have struck side-on.

Q. I don't mean side-on, I mean that her bow struck the—

A. (Interrupting) If she struck any other angle than nearly right end-on, she would have taken this here too. (Indicating.)

MR. W. H. BOGLE: Mark that, please.

A. The lower portion of the stem.

MR. W. H. BOGLE: Mark it "E."

A. She would have taken this or she would have cut into her on the port side.

(Portion referred to above was marked "E" on claimant's exhibit "5-6".)

Q. (Mr. Hayden) Do you know how far back from the stem she struck? A. How far back from this stem?

Q. Yes.

A. She must have struck very little on the port side of this stem.

Q. Do you know how far? A. No, I would not say.

Q. On the port side?

A. It could not have been a great ways, with a six and a half degree list, she could not have struck a great ways aft of the port side of this stem.

Q. But you don't know how far?

A. No, I don't know how far, but it would be a very short distance.

Q. What was the line of the cutting or breaking of the beams of the ship?

A. I would not—I am not positive on that point, as to just where the line was—of the beams of the ship. I don't know as I exactly understand you there about the beams.

Q. These. (Indicating.)

A. Yes, but I mean what was that—ask that question again?

Q. I was going to say, what was the line of the breaking of the beams as compared with the fore-and-aft line amidships, what would be the angle that you would project that line on to get it?

A. I didn't take particular notice of the angle of the broken beams. I remember that was broken. I am not prepared to say just where that point was.

Q. When you saw the "Strathalbyn", was this broken plating on her? A. Yes.

Q. Still hanging on her, was it?

A. Still hanging on her.

Q. And that was hanging aft—the direction of it was aft?

A. To the best of my recollection now, it stood out about right angles to the ship.

REDIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Captain, you say that you were requested by the American Trading Company to survey this cargo on the "Strathalbyn"?

A. Not exactly that. They were requested to consult with me, from the head office in San Francisco, and Captain Genereaux went up there first and made some suggestions as to what to do with the ship, and then I went up shortly after and—

Q. (Interrupting) Was that after or before the collision?

A. That was after the collision. Nothing whatever to do with it before the collision.

Q. Do you know who surveyed the cargo before the collision, or if it was surveyed?

A. I don't think she had any survey. I am quite sure they have no surveyor.

Q. At the time you sighted along the stanchions to determine whether the light was obscured in front, how much of the cargo had been replaced on the vessel?

A. To the best of my recollection the lumber then was a little above the forecastle head—as I recollect it; I am not quite positive on that point. I know the stanchions were in place and there was considerable of the cargo still to go on.

Q. I understand you to say that the opinion you formed from your examination at that time was that the outside of the stanchion was a little outside of the light? A. It was.

Q. So that the angle of the light ray would be off from the ship? A. It was.

Q. You said in your cross examination, that you had examined a number of others since. Just what did you mean by that?

A. Why, I have given—since this accident we have paid very careful attention to the location of the lights and the range of the lights, to see if they were obscured by the stanchions of the deck load.

Q. Have you had occasion to do that with the "Strathalbyn", or has she been back here since the accident?

A. She has not been back here since the accident.

Q. Have you made any examination of any sister ship of the "Strathalbyn"?

MR. HAYDEN: I object to that as immaterial.

A. I think we did on one ship. I don't recollect her name—that is, one of the sister ships—one of the "Strath" boats.

Q. Was that ship built in all respects as the "Strathalbyn"?

A. Well, that—I did not look that up to see whether she was built just the same.

Q. What was the result of your examination of that vessel?

A. Why, I felt as though the same conditions existed there as they did here.

Q. That is, that the light would be obscured?

MR. HAYDEN: I object as leading.

A. At a certain point ahead.

Q. (Mr. W. H. Bogle) Captain, you stated that these stanchions were placed as usual in loading lumber on that class of vessels? A. Yes.

Q. Where is it usual to place the light when vessels of that kind are loaded with a heavy deck cargo of lumber?

MR. HAYDEN: Objected to as immaterial.

A. Put it higher up.

Q. (Mr. W. H. Bogle) Is it customary or usual to use the light—the lower light?

MR. HAYDEN: Same objection.

A. In several cases they put the light higher up, and in a number of others the stanchions have been cut off.

Q. The light on this vessel was on the lower house, was it? A. Yes.

Q. You stated, captain, at the time you saw these stanchions when they were loading, the cargo was about up to the forecastle head?

A. To the best of my recollection it was, yes.

Q. Do you know—

Q. (Mr. Hayden, interrupting) You say above the forecastle head?

A. Yes, above the forecastle head; that is as near as I can recollect.

Q. (Mr. W. H. Bogle) Do you know how much higher the lumber would be loaded when she took on her full cargo as she had at the time of the collision?

A. I understood she had about 15 feet of a deck load.

MR. HAYDEN: I move to strike that out. He don't know anything about it.

THE WITNESS: I made some inquiries.

Q. (Mr. W. H. Bogle) How much would that be above the load she had on at the time you saw her?

A. Oh, I should think about five feet higher.

Q. What would be the effect of placing the lumber deck cargo five feet higher up, on the stanchions?

A. Well, there is a tendency to spread out a little at the top—a high deck load.

RECROSS EXAMINATION.

Q. (Mr. Hayden) That tendency is not in the loading of the vessel, is it, that tendency is when you get her to sea and she commences to roll around, isn't it?

A. Well, of course it is more noticeable then, when she gets to rolling around.

Q. And they put chains and wires across the stanchions to hold them in together, don't they? A. Yes.

Q. They draw them in as tight as they can when they start out, don't they?

A. They are supposed to, but vessels that don't load under survey, I don't know whether they do that or not.

REDIRECT EXAMINATION.

Q. (Mr. W. H. Bogle) Does that prevent the tumbling out on steamers?

A. If they are set up properly it does help in port, but as soon as they get to sea, why, they start out again.

(Witness excused.)

JAMES FOWLER, produced as a witness on behalf of the RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Lawrence Bogle) What is your business, Mr. Fowler? A. I am a marine surveyor.

Q. How long have you been engaged in that business? A. Well, about twelve years.

Q. And what position do you occupy at the present time, captain?

A. I am a ship and marine surveyor for Lloyds Register of Shipping.

Q. Captain, did you make an examination and survey of the steamship "Strathalbyn" after her collision with the steamship "Virginian"? A. I did.

Q. When did you make that?

A. The following morning about half past nine o'clock, at Tacoma.

Q. Where was the "Strathalbyn" lying at that time?

A. She was then laying at a buoy in Tacoma Harbor.

Q. Had any of her deck cargo been removed at that time? A. No.

Q. Did you make a careful examination of the nature of the damage, captain?

A. As much as could be seen at the time.

Q. Did you make any examination of the deck cargo and the stanchions?

A. Well, I saw them. I made no special examination of them, but I just saw them there and took a con-

siderable pains to examine things generally throughout the ship.

Q. Did you examine the lights—the location of the lights?

A. Well, I had occasion to go—when I landed on board of her I went in through the damaged bow and went up on top of the cargo, on the forward deck and from there I went on the bridge deck, over the screen of the light on the lower bridge, on the port side.

Q. On the port side? A. Yes.

Q. Did you take any particular note of the port light—the location of it as it was located in the light-screen on the lower bridge?

A. Well, I stepped over a lantern that was there. I didn't see any lamp, but I stepped over a lantern which was in the box.

Q. There was no light in the box at that time?

A. Not at that time.

Q. Captain, from your investigation and examination of this vessel, her deck load and location of lights and stanchions, what was your opinion as to the visibility of these lights directly ahead or nearly so?

A. Well, I examined the port side one, the starboard side being very nearly down in the water. She was then in a sinky condition and—well, preparations was being made to get her put on the mud flats close to. I cast my eye along from this lower light—along the stanchions, and I could see, plainly, that the light could not be visible forward. At that time the vessel had a heavy, heavy list astarboard, in fact the starboard —cargo on the starboard side was in the water and all the weight of the deck cargo was on the starboard stanchions; and I set myself looking along from the lamp—I didn't look from the forecastle head aft, but I looked from the lamp, where the lamp was placed, and I satisfied myself it would be impossible to see any light ahead.

Q. At that time you say that the weight of the deck cargo was off of the port stanchions? A. Yes.

Q. So that that—

A. (Interrupting) Absolutely all resting upon the starboard side.

Q. And even in that position you were satisfied

that the port stanchions obscured that light? A. Yes.

Q. So that it could not be seen—

A. (Interrupting) Yes.

Q. (Continuing) —from ahead. Captain, could you tell, from observing that light and sighting along the stanchions, about what degree the line of the light would be off to the port?

A. No sir, I could not say that with any accuracy.

Q. Have you any idea about how many degrees it would be—points or degrees?

A. Oh, possibly two degrees, somewhere thereabouts, and it might be more; but it would be that, anyway.

Q. At the time that you saw it? A. Yes.

Q. Then there would be some point or some distance ahead at which this port light would not be visible?

MR. HAYDEN: I object to that as leading.

A. Yes, sir there would be a spot that it would not be seen, would not be visible ahead.

Q. You testified that you made an examination of the damage to the "Strathalbyn". Did you make any subsequent examination of her damage?

A. If I may say it, my first duty was the safety of the ship. I was called there by Lloyds' agent and the vessel at that time was in a sinking condition. I agreed with the captain that the best thing to do, for the safety of the ship and cargo, was to cast off from the buoy, get tow-boats and push her. There was no room to tow her, but to push her broadside onto the mud flats, which were not very far away. At this time No. 1 hold had been full of water immediately after the collision, but sometime early in the morning, about eight o'clock, I believe, they found the water leaking into No. 2 hold. This was the condition of things when I went aboard of the vessel. After we had the vessel in safety and the tide began to recede, I then examined the damage, as far as was possible at that time.

Q. What was the nature of the damage to the "Strathalbyn", captain?

A. The stem was cut, apparently, as far as I could see as the tide went down, away about—what I take would be about the water line, possibly, when she was

loaded, about 23 feet back and fore, thereabouts, about 23 feet; the stem was cut and the upper works on the port side between the hawse-pipe and the stem was cut away, and the whole of the starboard bow crushed and crumpled up, laying in a mass, hanging on the ship's side about two frame spaces abaft the collision bulkhead.

Q. Captain, did you examine or survey the steamship "Virginian" after this accident? A. Yes sir. I did.

Q. What was the nature of the damage to her?

A. She had the starboard plates from the top to the oil tank—the lower compartment of the peak—from there upwards the plating was all ripped and torn. Several plates on the port side were dented.

Q. Captain, it appears in the testimony—

A. (Interrupting) In addition—I beg your pardon—

Q. Yes.

A. In addition to that, the stem bar was slightly bent.

Q. It appears from the testimony that at the time the steamship "Strathalbyn" left the port of Tacoma prior to the collision, she had a list to the starboard of about six degrees; that she had this list just prior to the collision with the steamer "Virginian". With this fact in your knowledge, captain, could you tell, from the nature of the damage to both vessels, the angle of contact of the two vessels at the point of collision, approximately?

A. Well, they were very nearly head-on, the "Virginian" slightly to starboard. From the nature of the damage, you could see that the two stems crossed each other; the "Virginian", being a stronger and heavier vessel than the "Strathalbyn", crushed through and cut the stem of the "Strathalbyn", but the fore-foots of both vessels slid past each other on the starboard sides, which guided the position or the direction—I should rather say the direction of the impact from the "Virginian" into the "Strathalbyn", preventing her going more central; with the fore-foots crossing each other made a guide for the ships to—in the direction of the impact.

Q. Captain, from the nature of the damage to the

two vessels, the fact that the "Strathalbyn" had a list of six degrees to starboard and the "Virginian" was on an even keel, could this collision have occurred at any other angle eycept head-on, or nearly so, and have caused this damage?

A. Well, it will be a difficult thing to say. Had they struck stem-on, the heavier vessel of course would have crushed right into the other one—the lighter vessel, but the way that they apparently locked horns, I might say, with each other, the one stem crossed the other and the lower half of the stem of the "Virginian" was on the starboard side of the "Strathalbyn", and the upper part was on the port side.

CROSS EXAMINATION.

Q. (Mr. Hayden) You do not imagine that the "Virginian" at the time of this contact was moving backward in the water, do you?

A. Well, I could not tell you. There was an impact some way from either of the bodies.

Q. Captain, where did you stand when you say you looked along the line of the stanchions for the purpose of determining where the light would be—how it would show forward?

A. I was standing right on the box where the lamp was, right behind the lamp; the lamp was down at my feet with the box in front of me with the screen in front of that. The stanchions were all in line.

Q. Yes. What was between you and the box?

A. Nothing between me and the box; the box was at my feet.

Q. What was between you and the light-screen?

A. Nothing between me and the light-screen. I was standing right on the light-screen, the box and the lamp at my feet, on the lower bridge—port side of the lower bridge.

Q. You were standing on the box-screen?

A. Well, right there; it was at the end of the bridge—part of the bridge.

Q. That was hung on a gate, wasn't it—

A. (Interrupting) No.

Q. (Continuing) —that went through the bridge?

A. Right on the port end of the bridge; not the

upper bridge; the lower bridge, which is in line with the bridge deck.

Q. I say that light-screen was hung on a gate?

A. That is on the end of the bridge.

Q. The light-screen stands somewhat above the deck?

A. No, it was standing level with that deck. I don't know whether I can see it here, or not.

Q. I think possibly you can see it here. (Referring to claimant's exhibit "5-6".)

A. Right in there. (Indicating.) This is the level of the deck here. (Indicating.)

Q. That is the level of the deck?

A. And it is right in there (indicating).

Q. There is the box, here. (Indicating.)

A. No, the box is way down there. (Indicating.)

Q. Well, will you please mark where you think the box was?

A. The box is right in here (indicating), it is right on here, as far as—it ought to be shown there. There is the deck (indicating) and there it comes right along there.

Q. I think that is the box right there. (Indicating.)

A. That is one up there. This is also one here. It is built right on the level of the deck here. (Indicating.)

Q. Don't mark it, captain, so that it shows that way, just leave it that way.

A. Yes. Well, that is it there, that is the box there. (Indicating.)

Q. As a matter of fact, it is a little above the bridge, isn't it—a little above the deck?

A. Well, it is so little, if it is anything it is only an inch or two, because I had to step—when I was going off the cargo, the cargo was up the level of here (indicating) and so everybody walked around there (indicating, then they had to go over here (indicating), and I stepped on there, right onto the box and on the deck, and I noticed there was a lantern—I could not say there was any light in it or anything, but there was a lantern there.

Q. Did you notice, captain, whether or not these stanchions tumbled inboard any?

A. I didn't observe how they were. I just merely looked along the line that they were standing at that time, and no cargo had been taken off the ship, nothing had been done at that time. The leashings and everything was all there.

Q. And you think that there might have been two degrees that the stanchions would be outside of the—

A. (Interrupting) Well, it might have been that, more or less.

Q. Outside of the center of the light, do you mean?

A. Yes, or it would be deflected off two degrees at least anyway outside of the ship.

Q. Outside of the center of the ship?

A. Well, I was taking the angle of the screen, I was taking the screen. I didn't know how far the light went out. The screen for the light there was obscured entirely by the stanchions.

Q. You mean the forward end of the screen?

A. Yes.

Q. The block, the four and a half inches of that block in the forward end of the screen? A. Yes.

Q. That was obscured. Then when you speak about the two degrees you mean that that was what was obscured the two degrees?

A. That was obscured there, yes.

Q. You never looked from the forecastle head aft to see whether or not you could see the lights, did you?

A. No sir, I did not.

Q. Nor you didn't look from any part of the deck load back along the stanchions to see if you could see the lights A. No.

Q. I may have misunderstood you, captain, but as I have got it down here you say that the "Virginian" hit the "Strathalbyn" slightly to starboard. Did you mean that, or slightly to port?

A. No, what I meant by that was that the line of the "Virginian" and the line of the "Strathalbyn"—the "Virginian" slightly on the starboard side here.

Q. That the "Virginian" struck the "Strathalbyn" slightly on the starboard side?

A. Slightly—the least little thing too—to the starboard side—on the port side, rather; but that is hard to describe, because it struck both on the port side above and the starboard side below, so that they were just the least little thing possibly here to starboard side when she struck, but when they crossed each other—I could describe it to you this way (illustrating).

MR. LAWRENCE BOGLE: You can't get that in the record.

Q. (Mr. Hayden) You can't get that in the record.

A. No, but this is what I mean. (Illustrating.)

MR. LAWRENCE BOGLE: Well, it won't do any good unless we get it in the record.

A. They crossed each other this way. (Illustrating.) So that they were very nearly stem-on; that is what I believe; that the "Virginian,,' coming down a little on the starboard side, sufficient to give her the start, then when the two fore-foots locked together, that guided the direction of the fracture—the tearing up of the "Strathalbyn", she went right along, but the two fore-foots being together prevented the "Virginian" from going straight into her.

Q. Would that have a tendency to throw the head of the "Virginian" over to starboard?

A. Starboard side of the "Strathalbyn"?

Q. No, to her starboard, would it make a tendency to have the "Virginian's" head swing to starboard?

A. No, it would be the other way, to put it over to port. You can easily see what the effect would be when the two ships come together on the starboard—ends of the stem come past each other that way, starboard to starboard; but the list that the "Strathalbyn" had made the stem of the "Virginian" cut through about the water-line and carried away on the port side the upper works of the "Strathalbyn". The two fore-foots being then past each other, guided the direction of the impact from the "Virginian" through the "Strathalbyn"; otherwise, it would have possibly gone more central, into the center of the vessel.

Q. Did you know where the waterline was on the "Virginian" on the night of this accident?

A. No, I didn't.

Q. Did you see the "Virginian" afterwards on dry-dock? A. No, I did not.

Q. You have mentioned having seen her being damaged somewhere—the "Virginian" being damaged?

A. Oh, the "Virginian". Yes, I had to do with the repairing of her—the "Virginian"—oh, yes.

Q. You say her stem was bent which way?

A. Bent in.

Q. In? A. Yes.

Q. You mean right aft? A. Yes, bent aft.

Q. Right aft? A. Yes.

Q. Was it bent to port or starboard?

A. No, straight in.

Q. Straight in? A. Yes.

Q. There were some plates cut on the "Virginian", weren't there? A. Yes.

Q. Do you know where those plates were?

A. Starboard side—principally on the starboard side.

Q. What was the line of that cutting?

A. The line of one of the decks of the "Strathalbyn", that is the principal damage.

Q. How much above the waterline was that?

A. The "Virginian's"?

Q. Yes. A. About two feet.

Q. About two feet above the waterline? A. Yes.

Q. How big a cut was it?

A. It would be about 20 feet long, jagged edges, open from one inch to three inches—one inch to six inches.

Q. And 20 feet long? A. Yes.

Q. Did it break any of her beams?

A. No, no beams broken; the frames was bent.

Q. Some of the frames bent? A. Bent, yes.

Q. Along on the line of this cut?

A. Yes, principally along on the line of that cut.

Q. And that cut was how far above her waterline at the time she was there?

A. Approximately about two feet, as far as I remember, somewhere thereabouts.

Q. Do you know what draft it was—what would be the draftline of it? A. The "Virginian"?

Q. Where this cut came?

A. I could not tell you without reference to my notes, which I do not have here.

Q. Do you know what deck cut that?

A. Well, I guess I could tell you what deck had cut her. I should think it would be this main deck. (Witness referring to claimant's exhibit "5-6".)

Q. Mark it.

A. I should think it would be the deck somewhere thereabouts. (Indicating.) Of course it may have been this other deck. It was either one or the other. It might have been this deck. (Indicating.) I don't know which. But it was in line of a deck, because nothing else could have stood the resistance to cut the plates there. I could not swear, without measuring, whether it would be either that deck or this deck. (Indicating.) It was either one or the other.

Q. Either "F" or "G"? A. Either "F" or "G".

MR. HAYDEN: Those figures appear on this exhibit "5-6".

Q. (Mr. Hayden.) The "Virginian" is pretty sharp bowed, isn't she?

A. Yes, she is pretty sharp down there in that part of her.

Q. What is the width of her, say 30 feet back from the stem?

A. I could not tell you. I could draw them out to a scale. It would be only guesswork.

(Witness excused.)

(Filed Feb. 28, 1913.)

THOMAS JOSEPH DUFFY, a witness produced in behalf of the Claimant and Respondent herein, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

DIRECT EXAMINATION.

BY MR. BOGLE:

Q. What is your full name?

A. Thomas Joseph Duffy.

Q. What is your business?

A. Master mariner and pilot.

Q. How long have you been a master?

A. Since 1890.

Q. Do you hold a pilot's license also? A. Yes, sir.

Q. For what waters?

A. Puget Sound and its tributaries.

Q. How long have you held that? A. Since 1890.

Q. Captain, how long have you been engaged in the sea faring business? A. About twenty-eight years.

Q. And you have been a master since 1890?

A. Yes, sir.

Q. For how much of that time have you been engaged in business as a mariner—master mariner, on Puget Sound and its tributaries?

A. Well, I have been off and on for the same time, since 1890, all the time, only for three years when I was in Alaska.

Q. At the present time you are pilot for the American Hawaiian Steamship company? A. Yes, sir.

Q. How old are you?

A. I will be forty-five in April.

Q. You were pilot aboard the Steamship Virginian at the time she was in collision with the Steamship Strathalbyn? A. Yes, sir.

Q. What voyage was she on at that time?

A. What voyage was she on?

Q. Yes. A. I do not know the number of voyages.

Q. Between what ports, I mean.

A. Oh, between Seattle and Tacoma.

Q. What time did she leave Seattle?

A. 6:40 when she got away from Seattle.

Q. How was she loaded at that time?

A. She had about 2000 ton.

Q. What is her capacity, Captain, when fully loaded? A. She can hold 12,000 ton.

Q. So at the time she was leaving Seattle she was light? A. Compared with what she would be if loaded.

Q. She was bound to Tacoma for the purpose of completing her loading? A. Yes, sir

Q. Who is the master of the Steamship Virginian?

A. Captain Green.

Q. He was on this voyage that you were in charge as pilot? A. Yes.

Q. Captain, do you remember what time you passed Alki point on this night? A. 7:12.

Q. About how far off did you pass Alki point?

A. Pretty nearly a mile off.

Q. What was your course from Alki to Pulley point? A. Southeast by south, quarter south.

Q. Did you steer the same course from Alki to Robinson, or did you change it at Pulley?

A. Changed at Pulley.

Q. What change in your course did you make at Pulley on this night of January 12th?

A. I hauled her about to about a quarter of a point.

Q. Where did you make that change?

A. About three or four minutes before we got to Pulley point.

Q. What was your course from Pulley to Robinson?

A. About southeast half south.

Q. Where did you change your course—set your course from Pulley to Robinson?

A. About abeam of Pulley—abreast of Pulley point.

Q. You hauled her back to this course, southeast half south? A. Yes, sir.

Q. What time did you pass Pulley point—what time were you abeam of Pulley? A. 7:53.

Q. Did the Flyer pass you on this night prior to the collision? A. Yes, sir.

Q. About where did she pass you?

A. About Pulley.

Q. What side, how did she pass you?

A. She came up on the port side and she crossed over our stern.

Q. Came astern of you on the port?

A. She came up on the port and passed over on the starboard before she got to us, passed over to our stern on the starboard side.

Q. Give you any signal? A. One whistle.

Q. Did you answer that whistle? A. Yes, sir.

Q. About where did she pass you?

A. About Pulley point.

Q. And about how far off from you?

A. I think about two hundred feet.

Q. Her course in passing you was more to the westward? A. Yes, sir.

Q. After passing Pulley point did you hear any other whistles of any other craft?

A. At Pulley point?

Q. After you passed Pulley and after the Flyer had passed you? A. Yes, sir.

Q. What was that whistle?

A. I heard a whistle, one whistle, one blast of a whistle.

Q. Did you answer that whistle? A. No.

Q. Did the Flyer answer it? A. Yes.

Q. About how far ahead of you was the Flyer at that time when she answered this one blast?

A. I should think about three or four hundred feet, might be more.

Q. How many points off was she to the westward from you, if you noticed?

A. I should think she would be a point or a point and a half.

Q. On which bow? A. On the starboard bow.

Q. At the time of passing Pulley, who was on the bridge of the Virginian? A. The third mate and myself.

Q. Who was on the lookout?

A. One of the quartermasters.

Q. Was Captain Green on deck at that time?

A. No.

Q. How high is the Virginian's deck above the water, or how high from the water on this night to the bridge? A. About forty feet.

Q. About how high is the bridge of the Flyer above the water?

A. About fifteen or twenty feet—it is not twenty feet—about seventeen feet.

Q. That is the bridge on which the navigating officers are located? A. Yes, sir.

Q. Captain, at the time you heard this one whistle answered by the Flyer, could you see any vessel or water craft ahead of you?

MR. HAYDEN: I object to that as leading?

A. No.

Q. Did you know where that whistle came from?

A. No.

Q. Did you try to make it out, or did you try to?

MR. HAYDEN: Same objection: leading.

A. Yes.

Q. What was the condition of the weather at that time? A. It was dark and overcast.

Q. Any fog? A. No.

Q. Did it rain shortly afterwards?

MR. HAYDEN: I object to that as immaterial.

A. I think it rained in Tacoma. It was raining the fore part of the night. It was raining and clouded up and then it rained again.

Q. What did you do when you heard this one whistle which was answered by the Flyer?

A. I asked the third mate if he heard a whistle, or if he could see her, and he said yes.

MR. HAYDEN: I move to strike the conversation.

MR. BOGLE: Yes, you may strike the conversations. Just state what you did?

A. I asked the third mate—(interrupted)

MR. HAYDEN: Captain, I do not want to object or interrupt unnecessarily, but I make objection to your stating conversations which took place. It is what you did, not what was said, or what somebody else said to you, but what you did.

Q. Go ahead and answer.

A. I asked the third mate if he could see anything.

MR. HAYDEN: The same objection, and move to strike it out as hearsay.

A. And he said no, and I went over to the port side to get my glasses. I made every effort to see if I could see anything and I could not see anything, what the Flyer whistled to.

Q. What was the third mate doing at that time?

A. He was standing pretty close to me.

Q. Was he making any effort to locate it?

A. He was.

MR. HAYDEN: I object to that as leading and move to strike the answer.

Q. Did you afterwards hear another whistle, apparently from some point ahead?

MR. HAYDEN: I object to that as leading.

A. Yes.

Q. How long after you heard the whistle from the Flyer? A. About a minute.

Q. What did you do when you heard this second whistle?

A. I went over to the—to get my glasses—rushed over to get my glasses.

Q. The whistle I am talking about now is the first whistle to you. A. Yes, sir.

Q. What did you do then?

A. I went to get my glasses to see if I could locate it.

Q. Did you locate anything?

A. No, I could not locate anything, and I fancied that I could see a hundred and one things, and I ordered full speed astern.

Q. How was your vessel going when you ordered full speed astern? A. Full speed ahead.

Q. Did you stop her at any time between full speed astern and full speed ahead? A. No.

Q. Gave no signal to stop her?

A. Oh, yes; I stopped her.

Q. When did you stop her?

A. When I heard that whistle.

Q. Which whistle?

A. The second whistle that I supposed was for me.

Q. You say the second whistle?

A. I mean when he whistled to the Flyer.

Q. That is the first whistle?

A. That is the first whistle.

Q. That is the first whistle to you?

A. I supposed it was for me.

Q. It was at that time you stopped her? A. Yes.

Q. How long after you heard that whistle?

A. Immediately.

Q. After having stopped her, what did you do?

A. I went over to the port side to get my glasses.

Q. You had stopped before you got your glasses?

MR. HAYDEN: I object to that as leading.

A. Yes.

Q. What did you do then?

A. I tried to pick up the light, or whatever it was,

whether it was a steamer or a gasoliner, or a small or big vessel. I could not make it out.

Q. Did you see anything?

MR. HAYDEN: I object to that as leading.

A. No.

Q. Then what did you do?

A. I ordered her full speed astern.

Q. About how long after you stopped her was it before you ordered full speed astern?

A. Well, it would not be, I do not think, a half a minute.

Q. Is the Virginian a single or twin screw vessel?

A. Twin screw.

Q. At the time of stopping her, did you stop one or both engines? A. Both engines.

Q. At the time of reversing did you reverse one or both engines?

MR. HAYDEN: I object to that as leading.

A. Both engines.

Q. After you had ordered both engines full speed astern—first, who did you give that order to?

A. The third mate.

Q. Did he carry out the order? A. Yes.

Q. Did you hear any other whistles from this craft ahead of you after reversing your—(interrupted)

A. Along about the time of the rebound of the telegraph was a whistle.

Q. What is the telegraph you are testifying to?

A. That is the signal from the bridge to the engine room. It makes quite a racket. You ring it on the bridge and they answer it down below and it comes back. It makes quite a racket.

Q. What is the construction of this telegraph? How is it constructed?

A. Round dial with two handles on it.

Q. And what is on the face of the dial?

A. It goes from full speed astern to full speed ahead, slow ahead, dead slow, half and full.

Q. Is there a similar dial in the engine room?

A. Yes, sir.

Q. Then, you do not signal the engine room by bells, only on this dial?

A. Yes; there is a bell to show that; when you manipulate it it rings in the engine room.

Q. After giving the signal full speed astern did you hear any other whistles from ahead?

MR. HAYDEN: I object to that as leading.

A. Well, I heard the danger signal.

Q. Did you hear any passing whistles? A. No.

Q. When did you hear this danger signal with reference to the time you reversed both of your engines?

A. Well, it must be a minute or over.

Q. Did you answer this danger signal?

A. The captain answered that, or ordered it answered.

Q. Captain Green? A. Captain Green.

Q. When did Captain Green come on deck?

A. When the ship stopped.

Q. How did you answer this danger signal?

A. With three blasts.

Q. What did that signify?

A. That she was going full speed astern.

Q. Had you changed your course—after having set your course from Pulley to Robinson, did you change your course at all?

MR. HAYDEN: I object to that as leading.

A. No.

Q. State what happened after you heard the danger signal and answered it with three blasts?

A. The ships came together. Well, I guess, it did not seem a half a minute. It was not very long.

Q. Did you have a watch or any time piece on deck to keep the time?

A. I did not keep the time at all, sir.

Q. Who kept the time? A. The third mate.

Q. When the two vessels came together, at about what angle did they strike, if you know?

A. I think they were pretty well head on.

Q. What was the effect of the blow upon the Virginian? A. It did not seem very much.

Q. Not very strong? A. No.

Q. Did it give the Virginian a list to either side?

MR. HAYDEN: I object to that as leading.

A. Just barely a list to port.

Q. Did the blow of the collision throw the Virginian off her course at all? A. Very little.

Q. What orders, Captain, were given aboard the Virginian, if any, after the contact of the collision?

A. Well—what orders?

Q. What did you do aboard the Virginian after the vessels had struck?

A. We were not together over a few seconds, and we backed off about three or four hundred feet, and I had the megaphone and hollered what ship it was or how about it or what was it.

Q. Did you get any reply? A. No.

Q. Captain, up to the time of the collision, the actual contact of the two vessels, did you give any orders whatever to change your course after having passed Pulley point and set your course for Robinson?

A. No.

Q. Was the course of the Virginian changed?

MR. HAYDEN: I object to that as leading.

A. No.

Q. Captain, up to the time of the actual contact, had you seen any lights of this vessel ahead, which afterwards turned out to be the Strathalbyn?

MR. HAYDEN: I object to that as leading.

A. No.

Q. Had you been able to make out the outline or loom of the vessel?

MR. HAYDEN: I object to that as leading.

A. No.

Q. Had you seen anything—(interrupted)

A. No.

MR. HAYDEN: Wait a minute; I want to get an objection in here if that kind of questioning is going to be continued.

Q. Had you seen anything, Captain, to indicate to you the position or location of this vessel ahead, so you could make her out?

MR. HAYDEN: I object to that as leading.

A. No, sir.

Q. Captain, the Virginian being a twin screw vessel, would she back straight or not?

MR. HAYDEN: I object to that as leading and suggestive.

A. Yes, she would back straight.

Q. Do you know whether she did back straight on this night or not?

A. She backed straight. I asked the third mate if the compass showed any and he said no.

MR. HAYDEN: I object to that as not responsive to the question, hearsay, and move to strike it out.

Q. After the vessels had been in collision, Captain, after the contact between the vessels, did you see any lights aboard the Strathalbyn?

A. Immediately after, or—(interrupted)

Q. At any time after they came together?

A. Well, when we were about—after the Flyer left —the Flyer came back, after the Flyer came back we could see some lanterns about the deck; I suppose they were lanterns, small lights moving around the deck.

Q. Before that time had you seen either one of her side lights?

A. When we backed away we could see them a couple of—for a few seconds.

Q. Which side light did you see?

A. Port; a red light.

Q. What was the position of the vessel at the time you saw this light?

A. I could just see the light; it was a little on the starboard bow; it was a dim light.

Q. You do not know how the Strathalbyn was lying at that time? A. No.

Q. What kind of a light was that?

A. It was a dim red light.

Q. Did you continue to see that light, or did you lose it?

A. I lost it in a second—in a few seconds. We were backing away, and I suppose she was slewing too.

Q. Did you see her mast head light at that time?

A. No.

Q. What did you do after the collision—after you had backed away, what did you do?

A. Well, this smaller,—we asked the Flyer if he was hurt, and he said—(interrupted)

Q. Just a minute. You asked the Flyer. Had the Flyer—the Flyer had passed you prior to the collision?

A. Yes; but she came back to the two ships.

Q. After the collision? A. Yes, sir.

Q. How long after the collision was it before the Flyer reached you?

A. A minute— oh, it must be a couple of minutes. It might be longer than that.

Q. What was the Virginian doing at the time the Flyer came back? A. She was laying still.

Q. Could you state what the Strathalbyn was doing? Could you see her?

A. I could see her more with the Flyer's lights. We could see the outline of her with the Flyer's lights.

Q. Could you state how she was heading?

A. She was across the sound. We were abaft her beam. She was heading towards Des Moines.

Q. What would the angle be between the Virginian and the Strathalbyn? What would the angle be between their courses, approximately?

A. It would not be right angles.

Q. Would it be more or less than a right angle?

A. It would be less than a right angle.

Q. How long did you lie there, Captain, before you gathered headway?

A. Oh, I guess it would be five or six minutes. It might be more than that.

Q. And then what did you do?

A. We followed her up as near as we could.

Q. Well, just go ahead and state what you did after that?

A. She headed—we supposed—she was heading over for Robinson's point, inside of Robinson's point, and we kept following her up. We would stop, and then go ahead slow, stop and go ahead slow, and that is the way we were going for twenty-five or thirty minutes.

Q. Then, here did the Strathalbyn go?

A. She went close to Robinson's point, inside of Robinson's point, pretty well under Robinson's point.

Q. Did you follow her in there? A. No.

Q. What did you do?

A. We waited around. We did not blow any

whistles. We would holler through the megaphone, but he could not hear us, or if he did hear us he didn't answer. Then we squared off around Robinson's point for Tacoma. We said, "we will go to Tacoma."

Q. Did you see any lights aboard the Strathalbyn when you passed her around Robinson's point?

A. Yes; when we passed her around Robinson's point we seen her mast head light.

Q. What was the appearance of that light?

A. Flare up and then go down. Some times we could see it and then could not.

Q. About how long did you see that light?

A. Well, from the first time we saw her, it would not be over—about a minute from the time I got up to Robinson's point until I got around it.

Q. Did you see it during all of that time?

A. Off and on.

Q. When it would flare up and you would see it?

A. Yes.

Q. And you continued on to Tacoma?

A. Yes, sir; we continued on to Tacoma. It would not be a minute while we were going around Robinson's point. It would not take a minute to get around Robinson's point. It would only be from the time. We were kind of abeam of the point, and then to change the course from southeast to about south by west, it would be only on the swing, and then we would come broad side to the ship.

Q. Do you know what time the Steamer Strathalbyn arrived in Tacoma after the collision?

A. No, sir; I do not.

Q. Did you go aboard of her the next morning?

A. No.

Q. Captain, about what time did this collision occur? A. About between 7:59 and 8 o'clock.

Q. About between 7:59 and 8 o'clock?

A. Yes; I do not know whether it was—(interrupted)

Q. About where did the collision occur, Captain?

A. It must have been a mile or a mile and a half—between a mile and a half or two miles southward of Pulley point.

Q. Captain, at the time of this collision, did the Virginian have any forward movement?

MR. HAYDEN: I object to that as leading.

A. I think she was about stopped.

Q. You think she was about stopped?

MR. HAYDEN: Same objection.

A. About stopped.

Q. What makes you think that?

A. The way they come apart. It was only a second, when we seemed to come together and then went away again.

Q. Did you look over the side of the Virginian to see whether she was going forward through the water?

A. I could not tell. The back water from the propellers was all the way forward of the bridge.

Q. You could see the back water churned up—(interrupted)

A. Yes; away forward of the bridge.

Q. Could you have seen that water if the Virginian had had any considerable headway on her?

MR. HAYDEN: I object to that as leading.

A. No, sir, I do not think so.

Q. Did you notice the Flyer, Captain, at the time of the collision? A. No, sir.

Q. How far ahead of you she was at that time?

A. No, sir; I was not watching the Flyer.

Q. Did the lookout, Captain, report any lights prior to the collision; that is, from the time you passed Pulley point did he report any lights? A. No.

MR. BOGLE: I think that is all.

WHEREUPON, Recess was had till 1:15 p. m., this date.

Testimony resumed. 1:15 p. m., Dec. 10, 1912.

THOMAS JOSEPH DUFFY on stand.

DIRECT EXAMINATION (Continued).

BY MR. BOGLE:

Q. There is another question I wanted to ask. Captain, how far did you pass off of Pulley point prior to the collision; how far were you off the point?

A. When we were abreast—when we were abaft the point?

Q. Yes; prior to the collision.

A. About a half a mile.

CROSS EXAMINATION.

BY MR. HAYDEN:

Q. You say you left Seattle at what time?

A. 6:40.

Q. What time did you get to Duwamish head?

A. I do not think we marked that down. I think there was a couple of fishing boats there. We gave Duwamish head a pretty wide berth; there was a couple of fishing boats there.

Q. You do not remember the time you passed Duwamish head? A. No.

Q. How far off from Duwamish head were you when you passed it?

A. Oh, I should think it would be a mile or three-quarters of a mile.

Q. Between a mile and three quarters of a mile?

A. Yes; somewheres around that.

Q. You passed Alki at what time? A. 7:12.

Q. When you left Seattle from what part did you leave? A. The Oriental dock.

Q. What is the distance between the Oriental dock and Alki point?

MR. BOGLE: We object to that; you can get that from the map and the charts in evidence.

A. I think it is about five miles.

Q. When you speak about miles, you are talking about nautical miles? A. Yes.

Q. What is the distance between Alki point and Pulley point?

A. That is seven and three-quarters—we call it eight miles.

Q. When you say you left Alki point at 7:12 you mean you had Alki point abeam? A. Yes, sir.

Q. And you were off how far? A. About a mile.

Q. And you were off how far from Pulley point? A half a mile when you had it abeam?

A. About a half a mile, as near as you could judge.

Q. The Flyer overhauled you between Priest point and Pully point, didn't it? A. Yes.

Q. How far abreast of Priest point?

A. Well, she was closer to Pulley.

Q. Closer to Pulley. Now, when I say, "overhauled you" and you say, "yes" what do you mean by "overhauled you"? A. When she was coming up astern.

Q. And when she got up to your stern, where were you, north of Pulley point? A. Yes.

Q. How far north of Pulley point?

A. Well, I should think a mile, between a mile and three-quarters. Somewheres around there. Between a mile and three quarters, I guess.

Q. North of Pulley point when the Flyer came up to your stern? A. Yes.

Q. Do you know how fast you were going that night? A. Yes.

Q. How fast? A. Eleven knots.

Q. Did the Flyer pass your bow before you got around Pulley point?

A. She—do you mean did she pass us before we got around Pulley?

Q. Yes; before you got around Pulley?

A. Well, about that. She might have been. She might be forward of the beam, abeam, or forward of the beam at Pulley point.

Q. Now, I understand from your testimony that you heard the first whistle when the Flyer was three hundred or four hundred feet, something like that, ahead of you? A. Yes.

Q. Do you know how fast the Flyer was going?

A. No.

Q. Captain Burns testified that she was going fourteen and a half knots. Is that about right?

A. They will say she is sixteen and seventeen knots, and again fifteen, and they will claim she is a fifteen knot boat. I do not know.

Q. She went by you quite rapidly? A. Yes.

Q. Going quite considerably faster than you?

A. Yes, sir.

Q. You would judge about fourteen and a half knots or fifteen knots would be about the correct speed?

A. Somewheres around there.

Q. Did you hear a whistle to the Flyer prior to the Flyer's whistle? A. Yes, sir.

Q. What time elapsed between the first whistle you heard and the Flyer's whistle?

A. There was not very much. I do not know just how much.

Q. How much do you estimate? What is your recollection of that now?

A. It was only a few seconds.

Q. Would it be longer than the ordinary time for whistles to answer each other?

A. Yes; it seemed a little longer than ordinary.

Q. How long is the ordinary?

A. They generally answer right away. Just as soon as the whistle blows, why the other fellow answers him.

Q. How much longer than the ordinary would you say this was? A. A few seconds.

Q. Fifteen seconds, maybe? A. A few seconds.

Q. What do you mean by a few seconds? A few sometimes means a great many and some times a very small number.

A. It might be five or six seconds.

Q. You say the Flyer passed you about 200 feet off? A. Yes.

Q. Right along your side and kept parallel with you? A. About two hundred feet off.

MR. BOGLE: I object to that question. He made no such statement as that.

Q. What is the fact?

A. She passed about two hundred feet off.

Q. Did she run parallel with you when she was passing you?

A. I cannot tell. She was running by and I am not sure when we were passing his stern lights. He might have changed.

Q. Fifty or a hundred feet away and you could not tell. If she did, you could not tell?

A. No, sir; nobody could.

Q. As I understand your testimony, when the Flyer whistled she was about a point off your starboard bow?

A. Yes.

Q. Did you ever calculate how many feet your vessel would be running a minute? A. No.

Q. Can you calculate it?

A. Well, now, I suppose you could.

Q. How many feet is in a nautical mile?

A. Six thousand and eighty feet.

Q. You were going eleven nautical miles an hour, you said?

A. Yes; that is what the captain told me she was going.

Q. I wish you would just multiply six thousand and eighty by eleven, Captain.

A. Well, I am not much on figures.

Q. You can multiply six thousand and eighty by eleven? A. No.

Q. Well, I make it sixty-six thousand, eight hundred and eighty feet. A. How much?

Q. Sixty-six thousand, eight hundred and eighty feet. That is the number of feet you would make in an hour, is it not, going eleven knots?

A. In going eleven knots, yes, sir.

Q. In one minute you would make one-sixtieth of that, wouldn't you? A. Yes, sir.

Q. That would make you go in one minute eleven hundred and eighty-eight feet, wouldn't it? That is right, is it not? A. Yes, sir; I suppose.

MR. HAYDEN: No; that is not right; just strike that.

MR. BOGLE: We object to all this testimony; anyone can figure out from the data which has been given, at least the Court can.

Q. It would be eleven hundred and fourteen and four-sixths feet, Captain. Now, the Flyer was going fourteen and a half knots an hour. Multiplying six thousand and eighty by fourteen and a half, I get eighty-eight thousand one hundred and sixty feet.

MR. BOGLE: We object to that. This witness does not know how fast the Flyer was going, and does not know how fast the Virginian was going excepting the statement of the captain.

A. I know how much time she made from point to point.

Q. Well, we will just suppose she was going this fast. That is the testimony of your own captain and

the captain of the Flyer. A. I know the points.

Q. Now, the Flyer then would go in one minute sixty into eighty-eight thousand one hundred and sixty, which I make fourteen hundred sixty-nine and one-third feet. Now, you say when the Flyer gave her whistle to the Strathalbyn, she was between three hundred and four hundred feet, something like that, ahead of your vessel. A. Well, as near as I could judge.

Q. The difference, then, between the speed of the Flyer and the speed of the Virginian, going in the same direction, in one minute, would separate them three hundred and fifty-five feet. So, if the Flyer was opposite your beam when you were at—or passed you when you were opposite Pulley Point, and she was only three hundred or four hundred feet ahead of you, you would have traveled one minute by Pulley Point when the first whistle was given. Now, Captain, in that one minute you would go eleven hundred and fourteen feet. You said this morning that you thought this collision occurred one and one-half to two miles, nautical miles, if I remember, from Pulley Point?

A. I said a mile or a mile and a half. It was about, as near as I could judge, about a mile or a mile and a half.

Q. Do you want to correct that at all after this calculation is made, as to the distance the Flyer was ahead of you? A. Oh, no.

MR. BOGLE: We object to that. The captain has no knowledge as to how fast the Flyer or the Virginian was going, and he does not know your figures are correct. He is testifying from his own knowledge.

Q. You do not want to make any correction at all about that? Don't you think you were closer to Pulley point than a mile and a half or two miles?

MR. BOGLE: We object to that. The captain has testified as to what he thought.

A. What was that again?

(Last two questions and answer read).

A. About a mile or a mile and a half, I think, to Pulley point.

Q. You do not think you were two miles?

A. No; between a mile and a mile and a half.

Q. What is the distance between Pulley point and Robinson's point?

A. About three and three-quarters—we call it four miles.

Q. Why do you call it four miles?

A. The way we do that is from—all of the pilots that ever I talked with, we would say eleven miles from Robinson's to Alki.

Q. Is it because you measured between the changes of your courses?

A. Some times you change the course differently. You give Robinson's point a different berth in different ships, if you have a light draft ship, you go closer; if you have a heavy draft ship, you go further off. They make two courses. In some ships, like the Flyer, Indianapolis, Multnomah and the Greyhound, they make one course from Robinson's to Alki, but generally with a big ship you make two.

Q. Did you change your course before or after the Flyer passed you?

A. About when the Flyer was with us. I am not sure whether she was by us or alongside of us when I changed the course. When we were abeam of Pulley point, I changed the course.

Q. How long a time elapsed between the time you heard the Flyer whistle answering the Strathalbyn and the Strathalbyn's next whistle? A. About a minute.

Q. About a minute?

A. Yes—oh, between the Flyer and the Strathalbyn whistle?

Question and answer, lines 7 and 10 read)

A. Yes.

Q. About a minute? A. Yes.

Q. It would be about a minute, then between the Flyer's whistle and the second whistle of the Strathalbyn? A. Yes, sir; about that.

Q. And your vessel was going ahead all of that time? A. Yes, sir.

Q. At whatever speed she had been going just prior to that? A. Yes.

Q. Now, how long a time elapsed between this sec-

ond whistle of the Strathalbyn before you heard her next whistle?

A. The next whistle? I did not hear that that good.

Q. Well, you heard it?

A. It would be a minute or somewheres around a minute.

Q. Now, how much time elapsed after you heard that whistle until you heard the next whistle of the Strathalbyn?

MR. BOGLE: I object to that; he did not testify that he heard another whistle.

A. I did not hear another whistle.

Q. I think you testified that you heard some more whistles of the Strathalbyn? A. No.

Q. Didn't you testify that you heard some more whistles of the Strathalbyn?

MR. BOGLE: Get the witness straight. Do you mean passing whistles?

MR. HAYDEN: I said whistle. Didn't you hear any more whistle or whistles from the Strathalbyn?

A. I only heard one distinct whistle from the Strathalbyn. There was another whistle that I heard faintly that was gone by the time I was ringing the telegraph.

Q. You say another whistle?

A. Only heard the danger whistle.

Q. What time elapsed between the time you heard the danger signal and the time you heard this whistle you say you heard faintly?

A. That must have been a minute, I should judge, or two minutes.

Q. Did you say a minute and a half or two minutes?

A. From the time she blew the first whistle it was a minute and a half to two minutes, or two minutes.

Q. This is between the whistle you heard faintly and the danger whistle, you say a minute and a half or two minutes. Is that correct? I want to know whether I understand you.

A. It was two minutes.

Q. How long a time elapsed between the danger

signal you heard from the Strathalbyn and the danger signal of three whistles you say you gave?

A. Before they came together?

Q. No; you say the length of time between the Strathalbyn's danger signal, which is four whistles—is that right? A. Yes, sir.

Q. And your three whistles?

A. There was hardly any. We answered them right away.

Q. They came right on top of each other?

A. Yes, sir.

Q. How long a time elapsed between your three whistles, after your three whistles were blown and the collision?

A. Well, it seemed about half a minute or a minute.

Q. You say about between a half a minute and a minute?

A. Pretty nearly a minute. I had not any time to judge, only guess at it.

Q. The same way you are guessing about the others. Did you hear, or do you remember of hearing the Strathalbyn blow three passing whistles? A. No.

Q. The way I figure up your time here, there was about four minutes elapsed from the time you heard the Strathalbyn's first signal to you after the Flyer had answered it and the time you came into collision. Is that the way you mean to have it?

A. Well, it is pretty near that; somewheres around there.

Q. Now, you ran one minute after you heard the Strathalbyn's first whistle to you before you gave the stop bell?

MR. BOGLE: We object to that; he testified exactly the opposite.

A. I stopped when the Strathalbyn blew to us.

MR. HAYDEN. Mr. reporter, will you go back and read Mr. Duffy's answer to the question a little further back there?

(The following was read to the witness by the reporter):

"Q. How long a time elapsed between the time you

heard the Flyer whistle answering the Strathalbyn and the Strathalbyn's next whistle?

A. About a minute.

Q. About a minute?

A. Yes—oh, between the Flyer and the Strathalbyn whistle?

(Question and answer, lines 5 and 8 read)

A. Yes.

Q. About a minute? A. Yes.

Q. It would be about a minute, then between the Flyer's whistle and the second whistle of the Strathalbyn? A. Yes, sir; about that.

Q. And your vessel was going ahead all of that time? A. Yes, sir.

Q. At whatever speed she had been going just prior to that? A. Yes.

Q. Now, how long a time elapsed between this second whistle of the Strathalbyn before you heard her next whistle?

A. The next whistle? I did not hear that that good.

Q. Well, you heard it?

A. It would be a minute or somewheres around a minute.

Q. Now, how much time elapsed after you heard that whistle until you heard the next whistle of the Strathalbyn?

MR. BOGLE: I object to that; he did not testify that he heard another whistle.

A. I did not hear another whistle.

Q. I think you testified that you heard some more whistles of the Strathalbyn? A. No.

Q. Didn't you testify that you heard some more whistles of the Strathalbyn?

MR. BOGLE: Get the witness straight. Do you mean passing whistles?

MR. HAYDEN: I said whistle. Didn't you hear any more whistle or whistles from the Strathalbyn?

A. I only heard one distinct whistle from the Strathalbyn. There was another whistle that I heard faintly that was gone by the time I was ringing the telegraph.

Q. You say another whistle?

A. Only heard the danger whistle.

Q. What time elapsed between the time you heard the danger signal and the time you heard this whistle you say you heard faintly?

A. That must have been a minute, I should judge, or two minutes."

Q. As I understand it you were ringing the telegraph at the time you heard this faint whistle at the time you telegraphed to back her?

A. Yes, sir; full speed.

Q. When did you ring to stop or back her the first time?

A. When she whistled to me, as I thought it was to me, the first whistle after she whistled to the Flyer.

Q. You thought that whistle was for you?

A. Yes.

Q. And then you stopped her? A. Stopped her.

Q. Then, you do not mean that after that whistle you were running for a minute at the same speed you were running before? A. Well, she was stopped.

Q. I asked you in a prior question if you did not continue to run after you heard the second whistle of the Strathalbyn, which would be the whistle after the one the Flyer answered.

A. Stopped then—(interrupted)

MR. BOGLE: I would like to find out what that question is. I do not think that question has been asked.

(Questions and answers just read by reporter, reread)

Q. Now, which whistle was it that caused you to stop your vessel?

A. When—about a minute after he blew that whistle—from the time he whistled to the Flyer, then the next time that whistle came he whistled, I supposed, for me. I could not see him, so I stopped.

Q. That was after the second whistle of the Strathalbyn?

A. Yes; the first whistle was to the Flyer and the second to me.

Q. Then you stopped? A. Yes, sir.

Q. Then you did not hear anything more at all for two minutes?

MR. BOGLE: I object to that. That is not what he testified to.

Q. Did you hear any more whistles? A. Yes.

Q. How long after the second whistle was it before you heard another whistle?

A. When we rung out to go full speed astern.

Q. How long was that?

A. That was between a half a minute and a minute.

Q. About half a minute?

A. It might have been—I should judge it was less than a minute—about that.

Q. Had you run your engines full speed astern before you heard that whistle or afterwards?

A. She was going full speed astern then, or the telegraph was rung.

Q. You had rung then, prior to hearing the third whistle?

A. I did not hear the third whistle—well, yes; that would be the third one; the one to the Flyer, the one to us, and the third one.

Q. Do you know how far the Virginian would go in a minute or the space of time between the time you stopped your engines and rung full speed astern?

A. From the time it was going full speed ahead until it was going full speed astern?

Q. No. From the time you stopped your engines until you rung them full speed astern?

A. I should think she would go about three-quarters of a mile.

Q. In a minute? A. Oh, no.

Q. I probably have not the right time. What was the time between the second whistle of the Strathalbyn and the third whistle of the Strathalbyn?

A. I guess about a minute.

Q. Now, you rung your engines to stop just after you heard the second whistle? A. Yes.

Q. How far would the Virginian go between the time you rung your engines to stop on the second whistle and the time you gave the signal full speed astern?

A. She would be almost going just as fast—her speed—the momentum of the ship would be—she would

be going ahead all of the time. I do not know just how fast she would go.

Q. Now, what length of time elapsed—if I am not mistaken, you said about two minutes between the third whistle of the Strathalbyn and the danger signal. That is what you said, isn't it?

A. From the third whistle?

Q. Yes.

A. Well, it would be a minute and a half or two minutes.

Q. And how long a time elapsed, did you say, between the danger signal to the time the vessels came together? Half a minute to a minute, was it? A. Yes.

Q. Now, during all that time, you say you did not know—that you did not see any lights ahead, but you say you think you saw something?

A. I saw a hundred and one things.

Q. What do you mean by that?

A. Well, I had the glasses, you know—I got my glasses and and I was not sure—I could not make out anything, and I fancied I could see something, or some black object. I could not find it again, and so I went full speed astern.

Q. You did not search for anything with your glasses prior to stopping your engines?

A. Not with the glasses.

Q. And you didn't see anything then, prior to stopping your engines? A. No.

Q. You didn't see anything, did you when the Strathalbyn first whistled to the Flyer? A. No.

Q. You could not see anything of the Strathalbyn at all? A. No, sir.

Q. But you saw the Flyer all the time?

A. Yes, sir.

Q. You did not see any headlight, or light that looked like a range light on the Strathalbyn at that time?

A. No, sir.

Q. Did you see any light afterwards that you think you might have mistaken for a shore light? A. No.

Q. The light you saw on the Strathalbyn after the collision, you do not think you might have mistaken that for a shore light at all? A. No, sir.

Q. Captain, when the Flyer passed you Captain Burns said that he saw a mast head light, what he took to be a mast head light, and the range light, when the Flyer passed you. Were you on the bridge at that time?

A. Yes; both off and on.

Q. What were you doing on the bridge?

A. Looking ahead.

Q. Why do you suppose you could not see these lights when the Flyer saw them?

A. I do not— (interrupted)

MR. BOGLE: Just a minute. We object to that as being incompetent. The testimony of Captain Burns of what he saw from a different location, a different position, would not affect this witness' testimony.

A. I do not know.

Q. Captain, the lighthouse keeper and his wife on Pulley point testified that they saw the Strathalbyn's lights off towards Robinson's point when she was coming up there. I would like some explanation from you why you could not see it.

MR. BOGLE: Wait a minute. I object to that for the reason that the lighthouse keeper and his wife gave no such testimony, and it is not proper cross examination. There is no such testimony in the record.

A. Well, I cannot account for it. I can see. My eyes are all right. I could not see her.

MR. BOGLE: It makes no difference what anybody else saw. This man is testifying from his own knowledge.

Q. Captain, you said no light was reported by your lookout between Pulley point and the time of this collision.

A. Pulley point? I forget now how many lights he did. I do not remember.

Q. You saw a red light ahead of you, didn't you, Captain- A. At Robinson's point, you mean?

Q. A red light ahead?

A. I seen Robinson's point.

Q. In the Ledger, Sunday, January 14th, there is this statement made: "Pilot Duffy says the steamer's red light was visible for half an hour, and he thought

it was the light on Robinson's point." Do you remember making that statement?

A. Never in the world; never.

MR. BOGLE: We object to any statement which might have appeared in the Tacoma Ledger as being improper.

Q. You remember having a newspaper man interview you in connection with that? A. Not me.

Q. Never even spoke to you about it afterwards?

A. One asked me, and I told him to see Captain Green.

Q. You never said a word?

A. No, sir; I never said a word to anybody.

Q. Captain, one of the officers on your own vessel testified that just prior to the collision that he saw a light aboard the Strathalbyn. Did you see a light aboard the Strathalbyn just prior to this collision?

MR. BOGLE: We object to that because no such testimony appeared.

A. No, sir.

Q. When did you first get the loom of the Strathalbyn?

A. When the Flyer was between us and the—between the Virginian and the Strathalbyn; the lights of the Flyer—she went over to the Strathalbyn first and then she came to us.

Q. When the Flyer was between you and the Strathalbyn? A. Yes.

Q. Did you not see her when the Flyer was on the other side of the Strathalbyn, then? A. No.

Well, I might have seen the loom, but I do not know which side. We might have got the loom of the black hull of the ship.

Q. That is the first you knew what hit you?

A. Yes; well, we did not know then what hit us.

Q. You knew something hit you, didn't you?

A. Yes, sir.

Q. You knew you had been afoul of something?

A. Yes, sir.

Q. What did you suppose it was?

A. We supposed it was a ship.

Q. And you had not been able to pick her up at all during that time? A. No.

Q. When the Flyer gave one whistle and the Strathalbyn gave one whistle to the Flyer, you knew that a vessel was whistling to pass the Flyer, didn't you?

A. Yes; I knew there was something.

Q. And that those vessels were passing port to port?

A. Well, I supposed that was what it was.

Q. That is what you supposed at the time was the case? A. Yes, sir.

Q. Then, when they gave the next whistle from the Strathalbyn, you knew something was coming towards you from Tacoma, didn't you? A. Yes.

Q. And that that whistle was a whistle for your vessels to pass port to port?

A. Well, I suppose it was.

Q. At that time you supposed it was? A. Yes.

Q. Now, I suppose you were in some doubt as to what was ahead of you?

MR. BOGLE: I object to the form of the question.

A. Yes.

Q. I suppose you were in doubt as to the diretcion that vessel ahead of you was going in, were you not?

A. Yes, sir.

Q. You were in doubt as to the course it was taking too? A. Yes, sir.

Q. And you were in doubt as to the speed she was going? A. Yes, sir.

Q. The only whistles that were blown from your vessel at all were the three whistles that came after you heard the four whistles from the Strathalbyn? A. Yes.

Q. Now, when these whistles were being blown, Captain, the Flyer was in plain sight of you all the time, was she not? A. Yes.

Q. You did not know what they intended to do on board of the Strathalbyn at the time they whistled to you the first time? A. No, sir.

Q. Who was in control of the navigation of the ship that night? A. Of the Virginian?

Q. Of the Virginian, at the time of the collision, yes. A. I was pilot.

Q. You had control? A. Yes, sir.

Q. The man on the bridge who was giving orders and directions? A. Yes, sir.

Q. It was Captain Green that gave the direction to go full speed astern? A. No.

Q. It was Captain Green who blew the three whistles? A. Yes.

Q. You did not give that dirceiton?

A. I did not give the direction for blowing the three whistles.

Q. That was after Captain Green came out from down below? A. Yes.

Q. He had been below, hadn't he? A. Yes.

Q. How long had he been on the bridge before he gave those three whistles?

A. He just came up on the bridge. He was not up on the bridge—I do not know exactly how long. He just came up when I stopped.

Q. Came up after you stopped?

A. When the ship was stopped—when the telegraph was rung to stop her, Captain Green ran up on the bridge.

Q. Then he got up on the bridge after you rang to stop? A. Yes, sir.

Q. How long was he on the bridge before the collision?

A. Well, it would be, I should think, half a minute; between half a minute and a minute.

Q. Do you think he was on the bridge as long as between a half a minute and a minute?

A. Yes; I think he was.

Q. You think that is about right, do you?

A. Yes, sir.

MR. BOGLE: Read the question.

Q. Do you think Captain Green was on the bridge from half a minute to a minute before the collision?

A. Yes.

Q. And you think he came up about a half a minute or a minute before the collision?

A. Yes; he came up just when the telegraph stopped. I did not notice him coming up. He came up and I did not notice him. I was watching ahead then. I

did not notice that Captain Green came up on the bridge. This is only guess work on my part, about him rushing up.

Q. How do you know?

A. He said to the men that he did.

Q. But you did not see him? A. No, sir.

Q. When did you first see him?

A. When he answered them with three whistles.

Q. What course did you take from Duwamish head to Alki point?

I think it would be,—I am not sure. I think it was south southwest.

Q. You are not sure about that now? A. No, sir.

Q. What course did you take from Alki point to Pulley point?

A. Southwest by south, a quarter south.

Q. Then somewheres around about Pulley point you stood over to the eastward about a quarter of a point?

A. Yes, sir; before I got to Pulley.

Q. Before you got to Pulley? A. Yes, sir.

Q. And did you change your course when you got to Pulley?

A. We changed the course just before we got to Pulley. The point looked close and I pulled her out a little.

Q. The point looked close?

A. Yes. The Flyer was a little to the front.

Q. Then you pulled her out to the westward?

A. Yes, sir.

Q. How long did you run on that course after you pulled her out to the westward?

A. A couple or three minutes.

Q. Did you put that into your log book?

A. Yes—well, the log book—you see, I didn't keep any log. I kept no time. The third mate has done all this—or on the compass up above. I give this course and he goes up and sets the course.

Q. But you thought you were going to cut Pulley point a little close?

A. Yes; I had lots of room, and on general principles.

Q. You turned her out a quarter of a point to the westward, then. Is that right? A. Yes.

Q. Now, where was the Flyer when you changed your course between Alki and Pulley towards the west?

A. She was, oh, a couple or three—well, just astern of us a little to the port side.

Q. Just astern of you a little to the port side. Then, as she was passing you, coming from your port side to your starboard side you at that same time changed your course more to the westward?

A. No, sir. I did not change any—I just changed it once. I did not change for the Flyer.

Q. You said you had to haul out—(interrupted)

A. Yes; off the point.

Q. Off the point. Well, I am trying to find out where you and the Flyer were when you changed, hauled off the point. A. She was astern.

Q. How far astern?

A. Two or three lengths of the Flyer.

Q. Two or three lengths of the Flyer?

A. It might have been closer.

Q. Had she given a passing signal when you changed your course to the westward? A. No, sir.

Q. You changed your course after she gave the passing signal? A. Yes, sir.

Q. Do you remember how long before?

A. It might be three or four minutes.

Q. Three or four minutes before the Flyer gave you the passing signal?

A. Yes; when she was astern of us.

Q. To put it another way, Captain: How far north of Pulley point were you when you changed your course to haul out and miss Pulley point?

A. It would not be over a thousand feet.

Q. It would not be over a thousand feet?

A. No, sir; if it was that much.

Q. Then you ran on that course for two or three minutes? A. Yes, sir.

Q. Then you shifted your course again?

A. At Pulley.

Q. At Pulley, yes. You came back towards the eastward more? A. Yes.

Q. Now, what course were you on between the time you shifted a thousand feet north of Pulley point until the time that you shifted after you got by Pulley point?

A. What was our course?

Q. Yes.

A. Well, I suppose it was a quarter.

Q. How many degrees would that be?

A. That would be three degrees.

Q. About three degrees. A. Three degrees.

Q. Then after you got by Pulley point, what course did you then take to go to Robinson's?

A. Southeast half south.

Q. Southeast half south? A. Yes, sir.

Q. You were not where you could see the compass, were you? A. No, sir.

Q. You were not where you could see whether your vessel's head was swinging one way or the other, more or less?

A. I can see that by the lights when he is steering, sir.

Q. What lights? A. Any lights ashore.

Q. There were some lights ashore? A. Yes, sir.

Q. What kind of lights were those ashore?

A. There was Robinson's point— (interrupted)

Q. You were not heading for Robinson's point.

A. I was not?

Q. You were not heading for Robinson's point light. A. No.

(Last two questions and answers read)

Q. How much of your course would carry you east of Robinson's point?

A. The second or first course, Alki to Pulley or Pulley to Robinson's?

Q. The one from Pulley to Robinson that you finally took? A. The one from Alki to Pulley?

Q. From Pulley to Robinson's, the one you finally took. A. A point and a half to two points.

Q. How far would that carry you? How far would you be off Robinson's point when you passed it on that course?

A. I figure it would be three-quarters of a mile off Robinson's point.

Q. You didn't notice the Indianapolis coming up that night, did you? A. I seen her.

Q. Where did you see her?

A. When she was on the port side.

Q. Where did you first see her?

A. Oh, I could see her coming for a mile, almost. I could see up to Robinson's point, and I could see her coming down. She was well clear of us, so I didn't bother much about her at all.

Q. From what you said, I take it that it is absolutely impossible for you to state how you struck the Strathalbyn, at what angle, on account of the fact, you say, you could not see her at all?

A. I could not see her, but when she hit, and from the way of everything afterwards, it seemed right head on.

Q. At the time of the collision, you could not tell at all, could you? A. No.

Q. You could not tell her what angle you struck her at? A. No, sir.

Q. You said the head of your vessel was turned somewhat to the starboard, if I am correct?

A. Turned to port.

Q. What? A. Turned to port.

Q. The head of your vessel was turned to port by the impact of the collision? A. Yes, sir.

Q. How much to port?

A. Well, very little. I did not look at the compass. I asked the second mate and he said about half a point or three-quarters of a point. I asked the third mate.

Q. And he said a half a point to three-quarters of a point? A. Yes, sir.

Q. So, after the collision you went ahead in the same direction you were when you took the course?

A. No; we were about, I should think about a point —we backed away from them, and then when they came together she went off a little, I guess, to three-quarters of a point or a point. Her bow was turned more to port.

Q. When you backed off from her, how were you heading after getting through backing away after the— from the collision? A. I did not notice.

Q. About with reference to what point on the shore.

A. It would be close to Des Moines, over in that direction, in that bight.

Q. As soon as you backed off from the Strathalbyn, you headed over close in towards Des Moines?

A. We were heading that way, but not very close.

Q. As I understand it, your vessels came together and you say they were together a very little time?

A. Very little.

Q. And then you backed straight away?

A. Yes, sir.

Q. And when you backed away you headed toward Des Moines?

A. We were heading straight, but it would be naturally that way, closer than she would to Robinson's point.

Q. How was the Strathalbyn heading as soon as you backed away? Do you know? A. I could not tell.

Q. You could not see ser? A. No, sir.

Q. When you did first see her, how was the Strathalbyn heading?

A. The first time we could make the outline of her she was headed pretty well for Robinson's point, close over to Maury Island.

Q. When you first could make out the outline of her, she was heading towards Robinson's point?

A. Well, from the lights on her deck and the crew running with the lanterns.

Q. I think you said you could make her out when the Flyer came up?

A. The Flyer—well, this was after the collision.

Q. The Flyer came up after the collision. Which was the first time you could make out her outline as to how she was headed?

A. I could not make out her outline as to how she was headed. I suppose she was headed the way she was going, because we were going ahead and stopping, and we were drawing over to the point and we were following those lights.

Q. Off towards Robinson's point?

A. We kept porting and porting, and as soon as she —to keep in touch with those lights, and as soon as we would see the lights, we would follow her up.

Q. You did not see any stern lights on the Strathalbyn at all? A. No, sir.

Q. You didn't? A. No, sir.

Q. Didn't see anything you took to be a stern light?

A. No, sir.

Q. How much aft of her beam would you be following the Strathalbyn from the point of collision over to Robinson's point?

A. I do not know, because some times we would be forward of the beam and some times aft of the beam, because we were stopping, and then go ahead, and then stop, go ahead, and continued to do that.

Q. You would run up by her beam, and then go back of her beam? A. Yes, sir.

Q. You did see the red light on the Strathalbyn some time?

A. Just when we were getting away from her after the collision.

Q. What do you mean by getting away from her?

Q. While you were together?

A. When we got apart.

Q. When you got apart? A. Yes, sir.

Q. You didn't see it when you were going into her?

A. No, sir.

Q. But you did see it when you got apart?

A. Yes, sir.

Q. You didn't see the mast head light at all, as I understood you to say? A. No, sir.

Q. You didn't even see it after the collision until you got down to Robinson's point?

A. Yes; until we were leaving her. We were leaving her then.

Q. Until you were leaving her at Robinson's point. You did not see anybody then haul up a lighted lamp on the fore part of her where her mast head light would be? A. No, sir.

Q. You didn't see anybody lower down a mast head light? A. No, sir.

Q. You were looking for lights?

A. I was looking for lights. I seen lanterns around the deck, some times. I suppose forward or aft. You

cold not tell anything, but there was two or three, and then they would rush forward.

Q. But you were looking so as to keep track of her right along, keeping an eye on her?

A. Yes; I had my glasses.

Q. You never say anybody haul a mast head light up or lower it down, haul it up and lower it down?

A. No, sir.

Q. You saw the mast head light burning when you left her at Robinson's point?

A. Flicker up and go out; flicker up and go out.

Q. Like an electric light, would it go entirely out?

A. Almost.

Q. Would it go entirely out?

A. It would not go out entirely. You would see a light faint and then go up a little bit better, but it never was bright.

Q. When you passed at Robinson's point, did you see the side light? A. No.

Q. Did you look for it?

A. Yes; I kept looking at her all the time.

Q. You did not see the side light at all?

A. No, sir.

Q. You passed on her port side?

A. Yes, sir. I suppose it would be the port side.

Q. Now, when you drew up beyond her beam as the Strathalbyn was going from Pulley point to Robinson's point, did you see the side light at any time then?

A. No; I do not know as I ever was forward or aft of her beam.

Q. I thought you said forward.

Q. I said I did not know whether I was forward or aft of the beam at any time.

Q. How far away were you from the Strathalbyn when you saw her red light immediately after the collision?

A. Well, it would be about three hundred feet, I should think. I should judge about three hundred feet.

Q. You saw it how many points over your bow?

A. It would be about two points, I think, or two and a half—two points.

Q. Two points off what bow?

A. Off the starboard bow.

Q. Off the starboard bow?

A. She was swinging and we were backing up.

Q. You say she was swinging. The fact is, you do not know she was swinging?

A. I do not know. I suppose— (interrupted)

Q. How did you know?

A. We lost it right there.

Q. How long did you see it, Captain?

A. I only see it a few seconds.

Q. Now, you figure three hundred feet. Was that 200 feet to your bow and 100 feet off?

A. I am figuring—I have no way of figuring; it might have been closer.

Q. That is the way you tried to figure, two hundred feet to the bridge from the bow of your boat, and one hundred feet from the bow of your boat over to the other one? A. Yes, sir.

Q. And then the red light disappeared right away?

A. Yes, sir.

Q. Now, you saw the red light as you were drawing back from the Strathalbyn? A. Yes.

Q. Out of the wreckage? A. Yes, sir.

Q. Which way did the Strathalbyn turn, commencing with the point of time that you say you saw the red light go back to Robinson's point? A. How long?

Q. Which way did the Strathalbyn's head turn to swing around? A. It was turning to starboard.

Q. It was turning to starboard?

A. Yes; port the wheel; she was changing position all the time, I suppose to get over under the point it had to do that.

Q. And then which way did you turn?

A. We turned the same.

Q. You swung around to starboard too?

A. Yes; I tried to follow her up.

Q. Captain, do you know the places in between Des Moines and up along that east coast of the sound there? A. Do I know it?

Q. Yes; do you know Buenna and some of those other little places in there?

A. No, sir; I know about where Des Moines is, but

what the names of those places is there is so many new ones. I was into Des Moines once.

Q. Were you heading about into the bight there at Des Moines? A. No, sir.

Q. Right after the collision?

A. No, sir; when I said Desmoines I meant towards that shore, the main land.

Q. Maybe we can get it here if you will look at Des Moines here on this map. (Hands map to witness). Now, this place in here (indicating) is the direction you think you were heading. This is Libellant's Exhibit B. Just tell us, Captain, the general direction you think you were heading?

A. This is Robinson's point. (Indicating).

Q. Yes; just tell us the direction in which you were headed. Here is Pulley point (indicating); here is Robinson's point (indicating); how would you be heading now? A. Heading this way. (indicating)

Q. Give me the direction?

A. Is this Des Moines? (Indicating).

Q. This is Des Moines, yes. (indicating)

A. It would be about somewheres in here in this direction, like that (indicating).

MR. BOGLE: Witness points to Poverty Bay.

Q. Hold your pencil there, Captain. I have marked that: "Virginian heading after collision"; is that right?

A. Well, it is something similar to that.

Q. It might have been a little more to the east?

A. It might have been, but it is somewheres around there.

Q. This is marked on the chart, "Virginian heading after collision", on that line that leads up to it is somewheres around the direction she was heading towards that shore? A. Yes, sir.

Q. Captain, how much was the Virginian drawing forward that night? A. Well I do not know.

Q. She was light then, wasn't she?

A. She was light then.

Q. How much did you say she had aboard? Five thousand tons? A. Two thousand.

Q. Two thousand? A. Yes.

Q. Where was that stowed, do you know?

A. I guess it was all over the ship.

Q. She was down by the stern more than she was by the head?

A. Well, I do not know that; she might have been down by the stern. I really don't know. I do not bother about the draughts on the sound, coming in and going out, and there is lots of times I don't know how much freight is in them either.

Q. Now, Captain, did you watch the Flyer at the time of the collision? A. No.

Q. After you gave the bell full speed astern, how far, from your experience with the Virginian, will she run before her headway perceptibly stops?

A. I never was in her before when I had to back her full speed.

Q. That was the first time.

A. That was the first time, or any of them.

Q. Did you hear anybody sing out from the Strathalbyn at all? A. No, sir.

Q. Immediately after the collision?

A. No; I heard somebody hollering out, but I do not know whether it was from our ship, or even what it was that was said.

Q. You said something, Captain, about this collision occurring between 7:59 and 8 o'clock. Did you take the time then? A. No.

Q. It is pure hearsay?

A. The third mate kept all the time.

Q. It is pure hearsay as far as you know. You don't know of your own knowledge? A. No, sir.

MR. HAYDEN: I move to strike out that part of the testimony, then, on the ground that it is hearsay.

Q. Now, at the time of the collision, you say you think the Virginian was about stopped? A. Yes.

Q. You are not sure that she was stopped, are you?

A. No, sir; I am not sure.

Q. At the time of this accident and just prior thereto, the atmosphere was clear? A. Yes.

Q. So you could see lights clearly. A. Yes, sir.

Q. Now, Captain, coming from Pulley point towards Robinson's point, you are looking, are you not at

the reflection of the lights of Tacoma on the water from the sky, especially when it is overcast?

A. Not from Tacoma; not between Pulley and Robinson's point. I never found it that way.

Q. You never saw the lights? A. No, sir.

Q. Lights of Tacoma? A. No, sir.

Q. Where do you see the lights of Tacoma?

A. You can see the smelter— (interrupted)

Q. I am talking about the glow of the lights in the sky. A. It shows down that way.

Q. Down where?

A. Down close to the smelter, up towards Brown's point.

Q. Where do you first see it coming from Seattle?

A. Between Robinson's point and Brown's point.

Q. Do you not see it between Robinson's point and Pulley? A. No, sir; I never noticed it.

Q. You said the Flyer, Captain, was about one point off your bow when she whistled to the Strathalbyn. Was that off your starboard bow, or your port bow?

A. Starboard bow.

MR. BOGLE: I object to the form of the question. The captain said from a point to a point and a half or thereabouts.

Q. Was this point to a point and a half or thereabouts off your port bow or starboard bow?

A. Starboard bow.

Q. You are a pilot on the waters of Puget Sound, are you not? A. Yes, sir.

Q. For how many years? A. Twenty years.

Q. How many degrees of list do you suppose your vessel took when she came into collision with the Strathalbyn?

A. Very little. It was just noticeable. I could not estimate it. There was just a little bit of a list, hardly noticeable.

Q. Did it jar you on your feet at all?

A. No, sir; she almost hit the dock as hard. She hit 14 once harder.

Q. Were you on her then?

MR. BOGLE: We object to that as incompetent, and ask that it be stricken.

Q. Why I asked was because if you were not on her, I would like to know how she hit harder. I want to know whether you were on her. A. Yes, sir.

Q. Was that before or after this collision?

MR. BOGLE: We object to that as incompetent and immaterial. It has nothing to do with this collision.

A. Well, I do not know whether it was before or after. It was windy.

Q. Did you strike the dock side on? A. Yes.

Q. Side on? A. Side on.

MR. BOGLE: We object to this testimony as incompetent and immaterial. Counsel is trying to inject this into the testimony for the purpose of discrediting this witness.

MR. HAYDEN: That is not the purpose.

MR. BOGLE: What bearing can that have on this collision?

MR. HAYDEN: I asked him about the force of this collision and he said that he struck a dock with more force than he struck on this collision.

A. Well, it seemed more to me.

Q. If it struck side on, it would naturally make a difference?

MR. BOGLE: How would that have any bearing upon this collision?

MR. HAYDEN: We are talking about the force of this collision.

MR. BOGLE: It is not competent with reference to this collision.

MR. HAYDEN: That is all right; you have your objection.

Q. After the collision, did you notice the Flyer coming up to your vessels?

A. Did I notice her coming up towards me?

Q. Yes; did you notice the Flyer?

A. No, sir. I had the megaphone. I was hollering most of the time then.

Q. Who were you hollering to?

A. I was trying to find out. I asked how much damage, and what ship it was or what it was. I had the megaphone all the time then.

Q. You made some explanation that I did not catch

about the length of time you saw the Strathalbyn's mast head light, when she went in under Robinson's point and you left her. Will you tell me how long it would be that you would see her mast head light?

MR. BOGLE: We have no particular objection as to his testifying, but he has told us three or four times as to that.

A. It was just while we were siwnging around Robinson's point. She was inside of the point and we were swinging towards Tacoma, and when we got almost turned around—I do not know whether she was heading towards Tacoma or not, but on the turn there, we could see the mast head light, and that is the only time I seen it.

Q. How far did you pass Robinson's point going up?

A. We were close to Robinson's point; closer I think than I ever was before with a big ship.

Q. About how far was that?

A. Well, it was between a half and a quarter of a mile.

Q. And how far inside of Robinson's point was the Strathalbyn at that time?

A. Well, it seemed to be pretty close up; I thought she was on the beach.

Q. How far from the point?

A. Seemed to be close to the point.

Q. Right on the point?

A. Seemed to be close to the point.

Q. Just inside. A. Just inside of the point.

Q. Captain, how long would be the time between these flickers of this light you mentioned?

A. It would flare up and then go down; then it would flare up and go down again.

Q. How long a time would you say between the time that it was up to the apex of it, until it got down into the hollow or bottom of its movement?

A. A very short time; it would be seconds.

Q. Did you pass any vessels, Captain, when you were just off Robinson's point coming back to Tacoma?

A. I think so; I am not sure now, about, before we got to Robinson's point, when both ships were close to

Robinson's point, I think there was a couple of vessels passed. I forget which vessels they were now.

Q. Captain, you were asked in your examination before Mr. Turner: "Did you see the Flyer's lights all the time ahead of you?"

MR. BOGLE: What page?

MR. HAYDEN: Page 18. Answer, "Yes"; Question, "Then she passed to port?" Answer, "Yes"; Question, "What other lights did you see?" Answer, "That was all"; Question, "Did you see Robinson's light?" Answer, "Yes". Is that what you meant to testify to at that time?

A. I seen the Flyer's lights.

Q. "What other lights did you see?" Answer, "That is all". You did not testify at that time that you saw the lights of the Indianapolis?

A. Well he asked me about the lights. I understood he asked me with reference to the Strathalbyn's and the Flyer's light and the light on Robinson's point. He did not ask me about any other light.

Q. He asked you, "What other lights did you see," and you said, "That is all".

A. That is all I thought he was interested in.

Q. Captain, when you heard the passing whistle of the Strathalbyn, which you thought was for your vessel, did you change your course to go over to the starboard at all? A. No, sir.

Q. You had seen, however, that the Flyer passed this vessel all right to starboard?

A. I did not know whether she passed or not. I did not make out what she whistled for.

Q. You didn't hear the Flyer whistle after this second whistle did you? A. No.

Q. Then, she must have passed her, must she not?

MR. BOGLE: I object to the form of the question.

A. Passed the Strathalbyn?

Q. Yes. A. Yes.

Q. When you did not hear the Flyer respond to the Strathalbyn's second whistle, you were of the opinion at that time that the Flyer had passed a vessel coming towards you, were you not?

MR. BOGLE: We object to the form of the ques-

tion; trying to put the answer in the witness' mouth, and on the further ground that it is not proper cross examination.

MR. HAYDEN: It is to test his memory.

Question read.

A. I do not know how to answer that. When I did not hear the Flyer respond the second time?

Q. Yes. You were then of the opinion that there was a vessel coming towards you?

A. That is why I stopped.

Q. And that the Flyer had passed that vessel?

A. That is why I stopped because I could not see her and make out what it was. That is what caused me to stop, when she had passed and I could not see her, Then I did not know what was up.

Q. Captain, did you see any lights at all in the cabin or the engine room at all on the Strathalbyn?

A. No, sir.

Q. Even after the collision, did you see any?

A. No.

Q. Captain, do you remember this question being asked you at the inspection, page 33: Question: "What I want to get at, Captain, is you could not see this ship at all until you struck her, but after you did strike her, then this white light showed up and after you had lost sight of the red light, still you could keep her in sight for thirty-five minutes. How could you see her after and you could not see her before?" Answer, "Well, I do not know. I cannot account for that." Do you remember answering that question in that way?

A. I do not remember.

Q. Do you think that is the way you answered it?

A. I am not sure how I did answer it. If I answered it in that way, I was thinking his running lights were his signal lights. That is what I had in mind. He asked me about the lights— (interrupted)

Q. He asked how could you keep her in sight for thirty-five minutes when you could not see her before the collision. In other words, he asked you how you could see her after the collision when you could not see her before it, and you said, "Well, I do not know. I

cannot account for that". You won't deny that that was your testimony?

A. Well, I do not remember if I had it in mind then about his side lights and his range lights and his mast head light; those lights is what I—I think he must have put it to me about lights, asked me about lights.

Q. I read you the question, Captain? Go ahead, Mr. Bogle, if you have any questions to ask the captain, while I go over what I have here, and if there is anything I want to ask him further, I will do so later.

REDIRECT EXAMINATION.

MR. BOGLE:

Q. What was your course just prior to and at the time of the collision?

MR. HAYDEN: I object to that, having been gone into on direct and cross examination, and for the further reason that he was not where he could see the course taken by the compass.

A. Southeast, half south.

Q. Did you give that course?

MR. HAYDEN: I object to that as leading and as having been gone into.

A. Yes, sir.

Q. Whom did you give it to? A. Third mate.

Q. Captain, up to the time of the collision you had not changed your course?

MR. HAYDEN: I object to that as leading and as matter that has been already gone over.

A. No, sir.

Q. Captain, how much did the Virginian change her course at the time of the collision? How much was she thrown to port?

MR. HAYDEN: I object to that as having been already gone into on direct and cross examination.

A. He told me—I do not know whether it was three-quarters or a point.

Q. Did the Virginian change her course more than a point? A. She might have.

Q. Now, Captain, referring to Libellant's Exhibit B, to the arrow Mr. Hayden has drawn here and which Mr. Hayden has marked, "Virginian heading after collision". When Mr. Hayden first asked you the course

of the Virginian you pointed on a line to Poverty bay. What did you mean by that?

A. Well, I thought how much we would be off the point.

Q. He asked you what the course of the Virginian was after the collision— (interrupted)

MR. HAYDEN: Just a minute. Let me ask him a question?

MR. BOGLE: Go ahead.

MR. HAYDEN:

Q. Mr. Hayden drew the arrow on there along the pencil that you held, did he not? Didn't I draw the line along there, along the pencil you were holding?

A. Yes, sir.

Q. Was that a fair position of the arrow from the pencil you were holding?

A. It may have been off— (interrupted)

Q. I am talking about the pencil. Didn't I follow your pencil line? A. Yes, sir.

MR. HAYDEN: All right.

MR. BOGLE:

Q. When you first pointed the pencil you pointed it to Poverty bay; Mr. Hayden did not draw the line then? A. No, sir.

Q. He waited until you got the pencil around more eastward, and then drew the line? A. Yes, sir.

MR. HAYDEN: I object to that as insulting and slurring. Mr. Hayden did not touch the pencil.

THE WITNESS: You had your finger on it.

MR. HAYDEN: I had my finger over these marks (indicating), my hand on the chart, like that (indicating).

THE WITNESS: Like this (indicating).

MR. BOGLE: So as to cover up Pulley point and the course. Now, Captain, the position of the Virginian after the collision would not be the course she was steering. As a matter of fact, she was a point off, as she changed at the time of the collision?

MR. HAYDEN: I object to that as leading and cross examining his own witness.

A. This is all after the collision (addressing Mr. Hayden).

MR. HAYDEN: That is what I am talking about.

MR. BOGLE:

Q. Yes; in other words, was the momentum of the Virginian changed at all?

MR. HAYDEN: I object to that as immaterial.

A. No, sir.

Q. So the only change she could have in her course was the change made by the contact of the collision?

MR. HAYDEN: We object to that on the ground that it is leading and on the ground that he is cross examining his own witness; trying to impeach his own witness.

A. Yes, sir; the only change that was made was made from the momentum of the two ships coming together.

Q. You have testified that the change in the course caused by the contact of the collision was about a point?

MR. HAYDEN: Same objection.

A. Yes, sir.

Q. So, if this course was more than which you have drawn roughly, was more than a point off her original course, it is not a correct course?

A. No, sir; it is not a correct course.

Q. Did you mean to draw that as the correct course, or approximately? A. Yes, sir.

Q. The course which I am referring is "Virginian heading after collision", which was written in by Mr. Hayden? A. Yes, sir.

Q. Captain, did you take any particular notice of the Flyer as she was coming up astern of you at Pulley point?

MR. HAYDEN: I object to that on the ground that he is cross examining his own witness.

A. No, sir.

Q. After the Flyer had passed you at Pulley point and was ahead of you, did you take any particular notice of her?

MR. HAYDEN: Same objection.

A. No, sir.

Q. Do you know how fast the Flyer was going?

A. No, sir, I do not.

Q. To your own knowledge.

A. Well, to my own knowledge.

Q. If you know? A. No, sir.

MR. HAYDEN: Ask him what he thinks.

MR. BOGLE: I asked him if he knew, not what he thought.

MR. HAYDEN: What do you think?

MR. BOGLE: Wait a minute; I am asking the witness.

Q. Did you see Captain Green when he came on deck prior to the collision after you had passed Pulley point? A. No, sir.

Q. So, you do not know how long he was on deck before the collision? A. No, sir.

Q. Now, Captain, when you heard the whistle ahead of you, you testified you could not see any lights; that you could not see the outline of the vessel. Could you tell the location of that vessel, or whether it was a vessel? A. No, sir.

Q. Or know anything about her course?

Q. Or know anything about her course?

A. No, sir.

Q. Or know anything about her speed?

A. No, sir.

Q. When you testified that you were in doubt as to her course and speed, what do you mean?

A. The Strathalbyn.

Q. The vessel ahead which was whistling and which turned out to be the Strathalbyn?

A. I did not know anything about it.

Q. Never visible? A. No, sir.

Q. Captain, do you know how many minutes it was before you reached Pulley point, how many minutes you ran after you changed your course before you reached Pulley point? What I am trying to get at is, you changed your course before reaching Pulley point?

A. Yes, sir.

Q. On that changed course, how long did you run before reaching Pulley point?

MR. HAYDEN: I object to that. Cross examining his own witness.

A. I do not know; it was only a couple of lengths

off Pulley point, I just done it more not to get too close to the point.

Q. You do not know how long?

A. No; it was only a couple or three minutes if it was that.

Q. Do you know what distance you covered?

A. No, sir; just pulled her out and pulled her in again, that is all. I thought I would not get too close to the point— (interrupted)

Q. When did you pull her in?

A. When I got abeam of the point, and then set my course for Robinson's point.

Q. Was that course ever changed? A. Never.

Q. After the collision, you said, you saw some lanterns aboard as you followed up after the Strathalbyn. Could you make out the outline of the Strathalbyn?

A. Then?

Q. Yes. A. No.

Q. Do you know whether or not one of those lanterns was at the stern of the Strathalbyn?

A. I do not know what portion of her it was.

Q. You do not know where they were?

A. No, sir; they were moving around the deck.

Q. You did not see any regular stern light?

A. No, sir.

Q. Do you know what the position of the Strathalbyn was at the time you saw the red light, how she was headed right after the collision?

A. Well, it was a little— (interrupted)

Q. Could you see her?

A. I could not see her; just seen the light.

Q. You do not know how she was heading?

A. No, sir. I do not know how she was heading.

Q. After the collision and you were following up the Strathalbyn, do you know whether you were at any time ahead of her beam, prior to the time you passed her at Robinson's point?

A. I do not know whether we were forward of the beam or aft of the beam.

Q. Captain, you do not mean to state that your testimony here as to these whistles is absolutely correct as to the time, etc.?

MR. HAYDEN: I object to that as not proper, cross examining his own witness.

A. No, sir.

Q. Did you take the time on that night when you heard those whistles?

MR. HAYDEN: Same objection, and as leading.

A. No; only from the third mate.

Q. That testimony is given to the best of your recollection at this time? A. Yes.

Q. Did you know, or did you have any means of knowing whether this vessel ahead of you which was whistling to you was in dangerous proximity prior to the time that she gave you the danger signal?

MR. HAYDEN: I object to that as leading.

A. No.

RE-CROSS EXAMINATION.

BY MR. HAYDEN:

Q. What are passing signals for?

A. To tell which side of the ship to pass on.

Q. And they are usually whistled in such a distance as to know of each other's approach?

A. Hailing distance.

Q. The two blowing them then so there will not be danger in meeting? A. Yes, sir.

Q. And when a whistle is not blown there is danger of the ships being in trouble if there is no attention paid to them?

A. You blow your whistles, but you see your lights; you can tell what they are doing by lights.

Q. And when you cannot see their lights, you are in doubt about what they are doing? A. Yes, sir.

Q. And you are especially in doubt after getting a passing whistle if you cannot get the lights?

A. Yes, sir.

Q. Now, Captain, I do not want to be unfair; I want to ask you as a fair question about this arrow Mr. Bogle was asking you about, if you did not yourself place the pencil on that chart?

A. I placed the pencil on the chart. I put it here (indicating) and you put your hand over here (indicating).

Q. Didn't I have my hand here (indicating) ?

A. But then I could shift it over like this (indicating).

Q. I want to ask you if you did not place the pencil on the chart yourself upon that arrow as drawn?

A. I do not know whether I did that or whether you put it there or not.

Q. Didn't you testify that immediately after the collision your vessel was heading in towards Des Moines? A. A little to port.

Q. It swings a little to port when backing?

A. No, sir.

Q. How did she happen to back to port in this instance? A. She was knocked off.

Q. I said back?

A. That would throw her back. If you hit the bow the ship would swing— (interrupted)

Q. Wait a minute. You said she backed to port; she backed straight out of that wreckage to port?

A. Pretty nearly straight out.

Q. Didn't you tell me you were heading generally towards Des Moines immediately after the collision?

A. More than it was towards Robinson's.

Q. Is it not a fact that the arrow headed more towards Des Moines than towards Robinson's?

A. It is in Des Moines (indicating).

Q. It is not in Des Moines, is it?

MR. BOGLE: The captain has testified at to what that arrow shows; it is not a correct course.

MR. HAYDEN:

Q. That arrow is not hitting towards Des Moines?

A. It is not now, no; I do not know as she was headed out as far as that.

Q. There is no question but what she was heading more towards Des Moines than towards Robinson's?

A. Yes, sir.

Q. That is right?

A. No, sir; in the first place she would be a half a mile off this point (indicating). Her regular course coming up would be a half a mile off this point, and a half a mile from here would be like this (indicating). There is about the way the ship was (indicating).

Q. Now, Captain, after the collision, immediately

after the collision, when you saw the red light on the Strathalbyn, your vessel was heading more towards Des Moines than towards Robinson's point, that is what you testify to?

A. You asked me if this was after the collision when we were away from her four hundred feet.

Q. About the mark there; does that arrow show that?

A. No, sir; she would not be so much as that, because she would be only— (interrupted)

Q. Wait a minute. I do not want you to see this figure, because you could talk about a point. What I am talking about was on the land.

A. I am not talking about the land.

Q. I understood you were.

A. I see lots of lights and lots of points—(interrupted)

Q. Didn't you say to me that immediately after the collision, when you drew away from the Strathalbyn, that your vessel was headed more towards Des Moines than it was towards Robinson's point?

A. It would be if she was nearly knocked a point off, that would be a point and a half off the course she was steering.

Q. Certainly; that is right. Do you remember my asking if that did not show the direction—(interrupted)

A. This shows a little more than it really ought to be over towards this main land.

Q. A little more towards the mainland than it ought to be. You want to correct that now, do you?

A. Do you want to put it there?

Q. No. Do you want to correct that now.

A. This is about the course. There is the way we were heading. Our course would be clear of that point. (Indicating.)

Q. Can you put it down there?

(Witness draws line.)

Q. Now, what is that you are drawing there?

A. Now, I have not got it right. Which is which?

MR. HAYDEN: I don't know, but I want you to rub out the line you drew if it is not right. There are a lot of lines on there that have been testified about.

(Witness erases line.)

(Witness draws line.)

Q. Now, what is that.

A. That is the course we ought to steer.

Q. Write that down, "course we ought to steer." Let Mr. Bogle write it.

MR. BOGLE: Is that your exact course? Is that southeast half south? A. Yes, sir.

MR. BOGLE: So if it is southeast half south it is right? A. Yes, sir.

MR. HAYDEN: Wait a minute. Write down "Virginian's course." (Witness writes.)

Q. All right; now, Captain, please tell me how the Virginian was heading immediately after the collision?

MR. BOGLE: Get your rule.

MR. HAYDEN: That is right; be careful.

(Witness measures with rule.)

A. Well, it would be very nearly about here (indicating).

Q. Mark it on there, please.

(Witness marks.)

A. All the way along?

Q. All the way along.

A. The farther you go the wider it gets.

Q. I do not care; mark what it is. Mark "Virginian after collision".

(Witness writes.)

Q. Write "Virginian" after it.

(Witness writes.)

Q. Now, Captain, what land did you notice ahead of you immediately after the collision?

A. I did not notice any of it. I was not thinking of land or those points on there. I was thinking of the ship.

Q. You were not thinking of land and you were not thinking of points. Then how do you know you were knocked a point off? A. Well, I asked the third mate.

MR. HAYDEN: Then I move to strike out all testimony in regard to being knocked a point off on the ground that it is hearsay.

Q. You say you did not look at the land at all?

A. Yes; I was looking at land, but I was not pay-

ing attention to any particular spot to get a line. I did not take any bearing or anything of that kind.

Q. Captain, you said you could not tell whether it was a vessel or not ahead of you. What did you think it would be when you heard the whistle? A. Didn't know.

Q. What did you think?

A. I could not see anything. Only heard a whistle.

Q. A sound like a steamer's whistle?

A. A sound like a steamer's whistle.

Q. Then, what did you think it was ahead of you?

MR. BOGLE: We object to that as immaterial.

A. Well, I could not see anything; I could not even locate it.

Q. What could you imagine it could be other than a steamer?

A. There is half a dozen things I imagined.

Q. What was it?

A. One was that the Flyer was passing something, and then I knew it could not be that, because she would have blowed to the Flyer. That was my first thought. That is what got me interested so quick to keep a lookout and also the third mate.

Q. What would be blowing to the Flyer?

A. Then, I could not see her lights—(interrupted).

Q. What would be blowing to the Flyer in that manner other than a steamer?

A. Having no lights on her, it could be a small tug boat with a big barge, and the lights—(interrupted)

Q. Would not that be a steamer? A tug boat is a steamer?

A. Yes; but I could not see where her lights were.

Q. A steamer is something propelled by steam?

A. Yes.

Q. And you heard somebody whistle? A steam whistle?

A. Some gasoline boats have a whistle like a steamer.

Q. So it would be either a steamer or a gasoline boat ahead? A. Well, I could not tell what it was.

Q. But you could tell it was a vessel of some kind that was blowing?

A. I knew there was a whistle there, but I did not know what it was.

Q. A whistle would not be blowing from a taxicab out there on the sound?

A. I could not tell what it was.

Q. The Flyer would not be answering a taxicab out there on the sound? A. No, sir.

Q. It must have been a vessel?

A. Yes, sir. It proved to be a vessel.

Q. How do you know you could not see a regular stern light on the Strathalbyn?

A. I do not know what light I seen there.

Q. A stern light is a lantern?

A. It is a regular lamp.

Q. Sticks up there on the stern?

A. It is a regular lamp, made like a mast head light or side light.

Q. They use a lantern for that purpose?

A. No, sir; they do not.

Q. They use a lamp? A. Yes, sir; a regular lamp.

Q. Did you see any such lamp? A. No, sir.

Q. Didn't see any? A. No, sir.

Q. I want to ask you one question. There has been a dirty insinuation put into this record that I changed that pencil.

MR. BOGLE: There has been no such insinuation at all.

Q. After you put that mark down on that chart, that I changed it. A. What?

Q. That I changed that pencil when you put that mark down on that chart?

A. I do not know whether you did or not, whether you put the pencil down and I put my hand on there to straighten it, or whether you did.

Q. When that line was drawn, at the time it was finished, you thought it was satisfactory?

A. I just drew the line—(interrupted)

Q. When that line was drawn, at the time it was finished, you thought it was satisfactory?

A. You put down, "Virginian heading after collision."

Q. You thought it was satisfactory at that time?

A. At that time, but I did not know you were going to put the Virginian in front of it.

RE-DIRECT EXAMINATION.

BY MR. BOGLE:

Q. Is it not a fact, when you first pointed that pencil you pointed it into the course that you have drawn this as on a line with Poverty bay?

A. Yes, but Mr. Hayden put his hand in the way and on the point, so I could not see. Even with those rules (indicating) you cannot draw a course. You have to have a parallel rule.

Q. When you were backing away from the collision, were you paying any particular attention to any point ahead of you? A. No, sir.

Q. How do you know how you were steering?

A. I do not know.

Q. That is just a guess?

A. I took the third mate's word for it. He was standing and looking into the compass all the time.

Q. You took that from somebody else's statement?

A. Yes, sir.

RE-RECROSS EXAMINATION.

MR. HAYDEN: I move to strike out all testimony about that on the ground that it is hearsay.

Q. Captain, after that pencil mark, an arrow, had been put down there, my fingers were taken up off the position of the ships in the center of the chart?

A. Yes, sir.

Q. And it was after they were taken off and after the pencil was removed that you said it was satisfactory?

A. Mr. Hayden. when you put the pencil on that mark, when I tried to put the pencil on that mark, I tried to draw it straight, but the damned pencil would not stay. I had to get a rule.

Q. I am talking about the first mark.

A. The pencil would not do. There was nothing to hold it, you could not, nor could I.

Q. Didn't you hold one end and I the other?

A. Then it slewed around. When I drew the pencil along it slewed around.

Q. After that had been drawn, after the pencil had been taken up, and after all the hands had been taken off, and you looked at it and saw the whole chart, didn't you say that was about the right position, and might be a little one way or the other? Answer that question yes or no. Didn't you? A. Yes, sir.

MR. HAYDEN: That is what I thought you did. That is all I want.

(Filed Jan. 7, 1913.)

FRED A. GARDNER, produced as a witness on behalf of the respondent, claimant and cross-libelant, having been first duly sworn by the United States Commissioner to tell the truth, the whole truth and nothing but the truth, testified as follows:

MR. BOGLE—Q. Mr. Gardner, will you state your full name? A. Fred A. Gardner.

Q. Your age? A. 48.

Q. What is your business, Mr. Gardner? A. Consulting Engineer and Marine Surveyor.

Q. You reside in the City of San Francisco? A. Yes.

Q. How long have you been in that business? A. About five years.

Q. What was your business prior to that time? A. Prior to that I was Engineer in Chief of the Union Iron Works, San Francisco.

Q. And you were engaged in that business for how long? A. I was with the Union Iron Works seven years, I think—7 or 8 years.

Q. Prior to that time what was your business, Mr. Gardner?

A. Immediately prior to that I was connected with the Market Street Railway System in charge of the electric power stations for them. Prior to that I was engaged as a marine surveyor for the Pacific Mail Steamship Company and the O. R. & N. Company, about six years.

Q. In connection with you business, Mr. Gardner, have you had any experience in repairing vessels? A. Well, my experience has been pretty largely along that line ever since 1898 or '99.

Q. At the present time what position do you occupy, Mr. Gardner? A. Well, I am in business for myself as Consulting Engineer and I am Surveyor for Lloyds' Agency here in San Francisco.

Q. In connection with that business, Mr. Gardner, do you make surveys of damages and recommend repairs necessary? A. Yes.

Q. Mr. Gardner, were you aboard the steamship "Strathalbyn" in the harbor of Tacoma in the months of January, February or March, 1912, after she was in collision with the steamer "Virginian"? A. I was aboard of her after her collision with the "Virginian"; just exactly what the date was I could not tell without referring to my records on the subject. It was about the time you mentioned, however.

Q. Do you remember, Mr. Gardner, whether you were aboard the boat before or after she was repaired? A. Both.

Q. Do you remember how many times you were aboard this steamer? A. No, I could not say exactly; a great many times.

Q. What was the occasion of your going aboard the "Strathalbyn"? A. I went aboard the "Strathalbyn" at the request of Messrs. Catton, Bell & Company, Lloyds' Agents in San Francisco, and the owners of the "Virginian", and followed up the repairs on the "Strathalbyn" at the request of the London Salvage Association.

Q. What was the interest of the London Salvage Association in this? A. I really don't know. I merely got this instruction from Catton, Bell & Company.

Q. I understand, Mr. Gardner, that you represented the owners of the "Virginian", or were you representing Lloyds' Agents? A. Representing the Underwriters, as I understood it, on both the "Virginian" and "Strathalbyn". I had instructions, written instructions eventually to co-operate with Captain Logan.

Q. Who is Captain Logan? A. Captain Logan represents the London Salvage Association as a special agent, I understand, in Victoria.

Q. During the times that you were aboard the "Strathalbyn" were you representing either side of this

litigation or either vessel, or were you appearing in the interests of both? A. I understood I was appearing in the interests of both.

Q. For the Underwriters? A. For the Underwriters.

Q. Mr. Gardner, were you aboard the "Strathalbyn" at any time after she was repaired and reloaded or partially reloaded after the collision? A. I was not aboard of her after the repairs were entirely completed. I was aboard her in Tacoma after the major part of the repairs had been completed at Victoria; there were some little items, one of which I believe was a mooring chock, had not been completed, and there were a few men sent over from Victoria to complete these repairs on the forecastle head; there were some other small details on the forecastle head as well that had not been absolutely completed. At that time the vessel was being loaded.

Q. Do you remember the extent of the reloading, how far advanced she was in loading? A. Well, the last time I was aboard of her her deck cargo forward was pretty well all on board; I imagine it was a couple of feet above the forecastle head, approximately that, as near as I can recall at the present time.

Q. That was her forward deck cargo? A. Yes.

Q. Of lumber? A. Yes.

Q. How was that cargo held, Mr. Gardner; that is, how was it loaded on the forward deck and held in position? A. Well, it was loaded on the deck and as it came considerably above the bulwarks stanchions were fitted along the sides to keep it from going overboard.

Q. Stanchions between the rail of the vessel and the cargo? A. Yes.

Q. That is to hold it? A. Yes, extending in that space between the break of the forecastle and the bridge.

Q. Did you notice the location of the sidelights on the "Strathalbyn" or rather the lightscreens on the lower bridge? A. Yes, I requested Captain Gibbs to have a look at it as well.

Q. Did you notice these lights in connection with the cargo stanchions—did you make any observations to determine whether or not those cargo stanchions would

obscure a light placed in the screens on the lower bridge from a point directly ahead in the condition the stanchions were at the time you were aboard? A. It was the position that the stanchions were in relative to the light-screens that attracted my attention, and knowing that Captain Gibbs was interested in the stowage of cargo largely on the Sound, I suggested he come over and take a look at them. I had noticed it, I believe, one or two days before the time that I spoke to him of it, and as the loading was pretty well along I thought he would be interested in seeing it.

Q. Just state, Mr. Gardner, whether or not the position of the stanchions at the time you examined them would obscure the lights? A. Yes.

Q. Placed in the light-screens? A. Yes. That was the reason for calling Captain Gibbs's attention to it.

Q. How did you make this examination,— where were you standing? A. By taking a position on the forecastle head and looking aft and later or prior to that really in looking from the screens themselves forward in the direction of the stanchions.

Q. You did not make any measurements at that time, did you, Mr. Gardner? A. None whatever.

Q. Could you state approximately how many degrees such a light would be obscured or deflected by these stanchions? A. Well, at the time that I was looking at them I was under the impression that the lights would be obscured from a point dead ahead to at least in line with the stanchions; that is, measured from the centerline of the vessel. I am referring particularly to the port side now, where we were looking particularly; that was off shore at the time she was loading; there was nothing else there to obscure the vision, whereas, I believe on the other side they were handling cargo; I would not be sure about that; but we looked on that side particularly—in fact looked at it on both sides.

Q. But could you state approximately how many degrees that light would be deflected, in your opinion? A. I have not thought of it in the light of being deflected; it is more a matter of its being obscured absolutely from right ahead at a point parallel with the center line of

the ship and measured out a distance equivalent to the position of these stanchions; it would possibly be deflected a matter of 10 or 15 degrees; that is a mere conjecture, however. I say what attracted my attention was their being obscured from ahead of the vessel.

Q. Did anyone call your attention to that or request you to make such observations, Mr. Gardner? A. No one requested me to make any such observation. In fact, I don't recall positively whether I heard it discussed before or after examining it myself, but I have heard it discussed from time to time. I would not have had it called to my attention at all had it not been for the uncompleted repairs on the forecastle head.

Q. That is what called you aboard the vessel? A. That is what called me aboard the vessel. I was not aboard for the purpose of looking at the light, with the exception of one occasion that I asked Captain Gibbs to go over with me.

Q. Did you make an examination and survey of the damage to the steamer "Strathalbyn" caused by this collision? A. I did.

Q. Did you make such survey and examination of the damage to the "Virginian"? A. I did.

Q. Will you state in a general way, Mr. Gardner, of what the damages to the "Strathalbyn" consisted?

MR. HAYDEN: I object to that. I do not see any necessity of stating in a general way what the damage consisted of. If he made a survey and report, I think he ought to state all the damages that were found; not in a general way what they were, and leave out part of what he found and include some other part.

MR. BOGLE—Q. Will you state as accurately as you can recall now what the damages to the "Strathalbyn" consisted of? A. Well, her stem was carried away, plating on the port side from the stem back for a distance of 25 or 30 feet torn adrift and crumpled up.

MR. HAYDEN—Q. On what side? A. On the starboard side. This down to about, as near as I can recall it now, the 24-foot line, but I would not be sure of that. The plating on the port side was bent and turned over inboard for 5 or 6 strakes down; the stringer-plates

on the forecastle deck, the upper deck and deck below were more or less damaged; a number of frames on the starboard side were damaged; also some on the port side; the deck-planking on the forecastle head was torn adrift, and the windlass more or less damaged. Some breast hooks were more or less disturbed. The bulkheads forming the crew's quarters were damaged to some extent.

MR. BOGLE—Q. What was the condition of the plating on the starboard side? A. Well, it was torn adrift and crumpled up and hung out from the ship's side back for a distance of approximately 25 or 30 feet.

Q. Was the plating on the port side bent or crumpled? A. Well, it was badly bent, and as I recall it now some of the plating that was not discovered to be actually fractured at the time of the first survey was later found to be fractured; that is, small fractures; bent more particularly.

Q. In what direction was that bent, Mr. Gardner? A. Bent to starboard.

Q. From port toward starboard? A. From the port toward starboard to such an extent that the port hawse-pipe was approximately where you would expect to see the starboard hawse-pipe.

Q. It was carried around? A. Carried around.

Q. Did you state that the stem was broken? A. The stem was broken.

Q. At about what point was the stem broken? A. Depending entirely on my memory, as near as I can recall, about the 14-foot mark, somewhere or other there; maybe higher; I would not be positive about it.

Q. Mr. Gardner, I will hand you a photograph which has been offered in evidence heretofore as "Libelant's Exhibit V 3", which is attached to the deposition of Mr. N. C. Erismann, and ask you if that photograph accurately shows the damage, or is an accurate photograph of the damage to the "Strathalbyn" at the time you examined it? A. It gives a very fair idea of the damage to the "Strathalbyn" in my opinion.

Q. I refer you now, Mr. Gardner, to a photograph which has heretofore been offered in evidence as "Claimant's Exhibit 5-6" and attached to the deposition of Mr.

No. 2728

# UNITED STATES CIRCUIT COURT OF APPEALS

## FOR THE NINTH CIRCUIT

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation,

Appellee.

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AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owners and insurers of said cargo,

Appellee.

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# APOSTLES ON APPEAL

(In Five Volumes)

(Vol. 5—Pages 1217 to 1469)

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From the United States District Court for the Western District of Washington, Southern Division.

SHERMAN PRINTING & BINDING CO., SEATTLE, WASH.

Filed
JAN 5 1916
F. D. Monckton,
Clerk.

Testimony of FRED A. GARDNER:

N. C. Erismann, and ask you if that accurately shows the nature of the damage to the steamer "Strathalbyn"? A. It shows accurately that portion apparent at the time I examined her, with the exception that considerable of the damages under water in this photograph was later seen when the vessel was discharged and in drydock.

Q. What was the nature of the damage below the water-mark? A. The plating was buckled, bent and in some cases fractured below the point shown in this photograph.

Q. Mr. Gardner, I call your attention to the letter "E" on "Claimant's Exhibit 5-6" and ask you what that is? A. The line appears to be pointing to the 27-foot draught mark at the stem.

Q. To the stem of the "Strathalbyn"? A. Yes.

Q. What point does that photograph show of the stembroke? A. At about the 28-foot 6 mark, I should judge.

Q. And that portion of the stem above the 28 foot 6 mark, was carried in which direction, Mr. Gardner? A. Carried to starboard with the shellplating.

Q. And that portion of the stem below the 28-6 mark, what happened to that? A. It was bent slightly aft and to port.

Q. Can you identify that portion of the stem above the 28 foot mark on this exhibit? A. I don't know that I can see the stem itself, but I can see the plating that was originally attached to the stem, and I think the stem was still connected to this plating, as I recall it.

Q. Just mark that; draw a line off to the side and mark that "F. A. G. 1"? A. Yes.

Q. What was the condition of the plating which appears there on the starboard side of the "Strathalbyn"? A. It was very badly crumpled up and fractured.

Q. What was the condition of the plating on the starboard sde of the "Strathalbyn"; was that bent or crumpled? A. Above the break of the stem it was bent over to starboard and fractured as well.

Q. What was the nature of the damage to the steamer "Virginian" caused by this collision? A. The

plating on the starboard bow for about 9 strakes down, as I remember, and extending back in some cases on to the second plate; the damage extended to the second plate and included the second plate.

Q. What was the nature of the damage to those plates? A. Some of them were fractured, others buckled and bent. The framing in the way of plating was more or less damaged; some of the frames were broken; others bent and buckled. There was a similar damage on the port bow, but not as extended as on the starboard side, and in that case did not extend, as I recall at the present time any further than the first plate on each strake.

Q. Was there damage to the "Virginian's" stem?

A. The stem was bent and on removing it it was found to be fractured; bent aft.

Q. Returning to the "Strathalbyn" what happened to that portion of her stem above the point where it broke? A. A portion of the stem was still attached to the side-plating, shell-plating, was hanging on this plating back 25 or 30 feet from its original position.

Q. On which side? A. On the starboard side.

Q. What is the comparative strength of the upper and lower plating on the steamer "Strathalbyn"? A. The upper plating was lighter than that below; it usually is.

Q. Is the same true of the "Virginian"? A. Yes, I think it is.

Q. Mr. Gardner, did you make recommendations as to repairs necessary to be made to the steamer "Strathalbyn"? A. I did.

Q. Also a survey of the extent of the damage? A. I did.

Q. Did you do the same with respect to the steamer "Virginian"? A. I did.

Q. Mr. Gardner, it appears from the testimony already taken in this case, that the steamer "Strathalbyn" at the time she left the Port of Tacoma prior to this collision had a 6-degree list to starboard and that she had this same list of 6 degrees to starboard immediately prior to the collision; with that fact in your

knowledge can you tell from the nature of the damage to the two vessels the angle of contact of the two vessels at the point of collision; with the further fact in your knowledge that just at the time of the collision neither vessel was making very much headway in the water and that the "Strathalbyn" was so trimmed that her stem was practically vertical on lines from the bow to the keel, and that the "Virginian" was light and much higher out of the water and her bow was much higher out of the water than the bow of the steamer "Strathalbyn"?

MR. HAYDEN: I wish to object to that hypothetical question upon the ground that it does not fairly state the evidence in this case and does not include all facts and conditions which would be essential as shown by the evidence in the case upon which to base a conclusion of this witness.

A. I do not quite understand the portion of the question referring to standing vertical with a line of the keel. That is not quite clear to me, just exactly what you mean.

MR. BOGLE—Q. What I mean is that there was no overhang, practically no overhang to her bow in the way she was trimmed on this night? A. That the stem stood in a vertical position due to the trim of the vessel?

Q. Yes, that was my idea? A. If she ordinarily had no verhang.

Q. The "Virginian" at the time was on an even keel? A. Taking into consideration the vessel having a list and that a portion of her stem was forced to starboard, the upper portion of it, and the lower portion forced to port, I would conclude that the vessels must have been practically head on to each other.

Q. That at the time of the collision? A. At the time of the collision.

Q. Mr. Gardner, could the damage which you found on the "Strathalbyn" have been occasioned in any other way than by a blow from a vessel hitting her almost directly head on?

MR. HAYDEN: The same objection,—the question not stating the facts fully and fairly, or furnishing sufficient information for the opinion of this witness

from the testimony already produced in the case.

A. I suppose the damage might have been occasioned in some other way, but I was of the opinion that it was occasioned due to her being struck by the "Virginian", or striking the "Virginian" while the keels of both vessels were practically parallel, one vessel ahead of the other.

MR. BOGLE—Q. On what do you base that opinion? A. Upon the nature of the damage and the statement to the effect that the vessel was listed at the time of the collision.

Q. From your examnation could you tell or did you determine where the bow of the two vessels first came in contact? A. I probably did at the time but I don't recall positively just at the present time.

Q. Can you explain, Mr. Gardner, how the stem of the "Strathalbyn" was carried to starboard, the upper portion of it, and the lower portion of the stem was bent to port by this collision? A. My opinion is that as the metal yielded after the vessels collided, owing to the greater strength of the lower portion of the "Strathalbyn" as compared wih the upper portion, that the "Virginian" was fended off to the port; in other words, that the course of the vessels after the collision must have changed somewhat, due to the glancing effect on account of the "Virginian" coming into contact with the underwater portion of the "Strathalbyn".

MR. BOGLE: That is all.

CROSS EXAMINATION.

MR. HAYDEN—Q. Have you any photographs of the "Virginian"? A. I think I have.

Q. Would you mind letting me see them, please? A. I may have some negatives; I don't know whether I have some photographs. There are a lot of them of the "Strathalbyn".

Q. Do you remember of taking any more photographs than these? A. I took a lot, but they did not come out at all; in fact, some of the films have absolutely nothing. I had some others blacker than that, just showing simply an outline.

(Witness produces all the plates and photographs which he has of the "Virginian".)

Q. Are you sure now that is all you have, Mr. Gardner? A. To the best of my knowledge and belief it is. They are all that seems to appear in the folder where these things are kept.

Q. Now, referring to "Libelant's Exhibit F. A. G. 1 for identification", will you please state what that photograph is of? A. To the best of my knowledge and belief that is a photograph of the port bow of the "Virginian".

Q. Taken by yourself or under your direction? A. Yes.

MR. BOGLE—Q. Which? A. Taken by myself, I think. In fact, I am pretty sure of it.

MR. HAYDEN—Q. Where was it taken? A. Taken in Seattle.

Q. At what dock? Was it taken at a dock? A. If I remember correctly that vessel was hauled alongside of Heffnan's dry-dock, and later taken away from there and I think that was where that picture was taken; I would not be positive of it, no.

Q. What does the photograph show? A. Unfortunately it does not show a great deal; it does show the damage to some of the plating, however.

Q. Was there any more damage to the plating on the port side of the "Virginian" than is shown in that photograph? A. There may have been some in this shadow that does not show here.

Q. Was there any damage back of the right hand side of the photograph? A. The damage, as I recall it, extended along no further than the first plate on each strake. Of course the length of these plates vary.

Q. The perpendicular line against which the ladder is resting is what? A. The stem of the vessel.

Q. Will you please take a pen and commencing at the top of the picture put an arrow at all the places on the picture that show damage and extend a line out from those arrows to the white portion of the picture, leaving room for some identification figure? A. I can't say whether that is damage or just scratched paintwork.

The picture is not very clear. These are undoubtedly dents.

Q. Please do not cover up the indication of damage by your arrow? A. That is all I am positive about. I am inclined to think that these are dents here (pointing), but they may be only paintwork scratches.

Q. Just mark the dents you have last referred to with an X. Now commencing at the top of the line of arrows mark down numerically with consecutive numbers the points that indicate damage and explain them as you proceed; state particularly whether they are dents or holes through the plating. A. No. 1, indentation, No. 2, apparently indentation; No. 3, indentation: No. 4, sharp indentation; No. 5, indentation; No. 6, indentation; No. 7, fracture; No. 8, apparently sharp indentation, possibly a fracture; same remarks apply to No. 9. No. 10, indentation, possibly fracture; No. 11, indentation.

Q. Now, Mr. Gardner, if I understood your testimony correctly, you said there were some fractures to the plating on the port side; what is your recollection about that,—which one of these marks that you referred to are the fractures? A. I think the record shows that.

Q. No. 10, No. 9, No. 7 are unquestionably fractures, aren't they?

MR. BOGLE: I object to that. Let the witness testify. He has shown which were fractures and which were indentations in his opinion.

THE WITNESS: I wish to say that I consider the photograph a very poor one, and possibly misleading. I have not offered this voluntarily as substantiating any statements that I have made.

MR. HAYDEN—Q. Have you a copy of your report of survey of the "Virginian"? A. I think I have.

Q. Will that report of survey show the indentations and fractures of the plates on the port side of the "Virginian"? A. I think only in a general way.

Q. While we are at this identification would you make getting your report of survey and see if after examining it it refreshes your recollection in any particu-

lar in regard to that situation? A. Yes. (Witness produces report of survey.)

Q. Now, referring to your report of surrvey, dated January 29, 1912, on the "Virginian",—I would like to ask you before going into that if you made any drawings to indicate the work that had to be done for the men to proceed by? A. No.

Q. Have you in your possession any drawings that were made by anybody else for the repairs to the "Virginian"? A. I have no drawings made for repairs to the "Virginian".

Q. Did you ever see any such drawings made? A. No.

Q. Now, can you by referring to this report of survey last mentioned by me indicate on the photograph "Libelant's Exhibit F. A. G. 1 for identification" any plate that was fractured? A. It is impossible to make a comparison between the report and the photograph from the fact that the photograph is incomplete and only shows a portion of the bow, and what the numbers of these plates were I don't recall at the present time by referring to the photograph.

Q. Would it assist you any to arrive at the number of the plates by referring to "Libelant's Exhibit F. A. G. 2 for identification" and "Libelant's Exhibit 3 for identification"? A. No, because it is impossible to decipher the line of strakes, although there are numbers placed on these plates by someone, I don't know who. Certainly not by myself.

Q. I see in here in your report of survey of shell plating on the port side that H strake No. 1 plate fractured, to be cut out and renewed? A. Which side?

Q. On the port side, H strake No. 1? A. You can't tell from the photograph which is the H-strake on the port side; and even were those numbers shown on the starboard side and the port side as well, I would not be able to identify them because they are not numbers that I put on the plates. I simply took my numbers from the bottom up, neglecting the stealers as stated in the report.

Q. What do you mean by neglecting the stealers?

A. Well, there is a triangular shaped plate, as the form of the vessel changes, inserted to make up for the difference in the number of strakes; there would be more strakes in the amidships than there are at the stem or stern, you see, as the vessel broadens out, it makes more surface to cover, and therefore there are a greater number of strakes of plating amidships than would be shown at the stem or at the stern; there is a plate inserted to make up for that difference, which is termed a stealer or thief.

Q. Is that plate inserted on the stem or the bow of the ship or is it inserted amidships? A. Where the difference in the area changes in the shp as she fines forward or fines aft.

Q. None of these stealers are shown in this photograph? A. None of them shown in this photograph.

Q. Your report refers only to the strakes as are shown in this photograph, does it not? A. No, my report is not made from the photograph; my report is made from the ship.

Q. Where your report refers to strake H, for instance that is the strake— A. (intg.) Counting from the bottom up.

Q. Counting from the bottom up at the bow? A. Yes.

Q. Practically at the stem? A. At the stem, yes.

Q. If your report shows that Strake H, plate 1, was fractured on the port side, what would you say as to whether or not the report was correct? A. To the best of my knowledge and belief the report is correct.

Q. And your report does show that strake H, plate 1, fractured, to be cut out and removed, does it not? A. Yes. I may state, however, that in preparing reports typographical errors sometimes occur.

Q. Why do you say that? A. Simply in explanation of a condition that is known to exist at times; from your dwelling on this particular plate, possibly there has been some error, or you think there has been some error made.

Q. You are mistaken there, Mr. Gardner, because I don't know anything about it. This is the first time

I have seen the report. A. That is my reason for saying that.

Q. I simply want to know as to whether or not the report is accurate? A. As I say, to the best of my knowledge and belief the report is correct.

Q. You do not want the Court to assume by reason of the statement that you made, that there may be a typographical error in it, that the reference to the Plate No. 1 H strake, is wrong, do you?

MR. BOGLE: I object to that. The witness has stated just exactly what the conditions were and has explained his testimony.

MR. HAYDEN—Q. I am not trying to catch you at all, Mr. Gardner. I may say I think you are too big a man to try to catch you. I simply want an explanation here. A. As I stated in answer to your question, I was under the impression that possibly an error had been discovered as you were dwelling on the particular plates.

Q. My purpose in asking it is simply for the information of the Court or anybody else who may be interested in trying to solve this case. I only want a full disclosure, if we can get it, of the facts in this case. A. Yes.

Q. That is my only purpose in asking this question. I will repeat the question now and ask you if you want the Court to assume that the facts are different with regard to Strake H being fractured as shown by the report?

MR. BOGLE: The same objection.

A. I will repeat my statement, that to the best of my knowledge and belief the report is correct.

MR. HAYDEN—Q. Now, still referring to the port side, were there any frames bent, broken or fractured? A. If I discovered any, it would be found in that report.

Q. Will you please look at the report and refresh your recollection about that and state whether or not there were any? A. Frames, port side, frame No. 1, slightly bent above forepeak tanktop, to be faired in

place; frame No. 2, slightly bent out below forepeak tanktop, to be faired in place.

Q. Is that all the references that there are to frames in the report, on the port side?

MR. BOGLE: I object to that. We have agreed that all survey reports will be introduced in evidence, and it will be apparent to the Court what the reports show.

MR. HAYDEN: I would like to have an explanation of the report from the man who made it. That was the purpose of asking the question.

MR. BOGLE: I have no particular objection to the question except we have agreed and intend to put in the survey report. A. I have no recollection at the present time of any further damage to the frames on the port side, and I see no further reference in the report of any additional damage to the frames on the port side.

Q. What part of the vessel is the forepeak tank situated in? A. It is situated immediately on the forward end of the ship.

Q. With respect to the depth of the hold, where is it situated; is in the bottom of the ship— A. (intg.) It extends from the bottom of the ship up to a certain height, and there flat or the deck is built over, forming the upper portion of the tank.

Q. About how high does it extend up above the bottom of the ship? A. It varies in different ships.

Q. Well, of course I am referring to the "Virginian"? A. In this particular case I don't recall exactly how far up, but I should say approximately 15 feet. I would not be positive about that, however.

Q. What in your opinion was the denting and fracturing of the plates on the port side of the "Virginian" caused by? A. I think it was caused by coming in contact with the structure of the "Strathalbyn", that portion of it that was forced over to starboard on the "Srathalbyn".

Q. What was the size of the frames that was bent on the port side of the "Virginian"? A. The size of the frames?

Q. Yes. A. I don't remember just now, but I think they were probably about 7 inches.

Q. What do you mean by 7 inches? A. 7 inches deep. There is an angle, if I recall it correctly, by possibly 5 inches—5 by 7, I think.

Q. The frames would be 7 inches deep and 5 inches wide? A. I think that is about the size of them.

Q. Is there an angle on the outboard side of the frames to which the plating is fixed? A. The plating is attached to the frames.

Q. Can you make a sketch of the appearance of the frames looking right down on the end of them? Put it on this "Libelant's Exhibit F. A. G. 1 for identification"? A. Look directly on the end of it?

Q. Lookng directly down on the end of it, yes? A. This would be the end of the frame, and this the plate to which it would be attached.

Q. You have marked the line out from that "frame" and the other "plating"? A. Yes.

Q. What part of the frame is 5 inches? A. The fore and aft portion of it.

Q. That is, the part that is adjacent to and touching your picture of the plating is 5 inches, and the part that is at right angles to the plating— A. (Intg.) I am simply assuming the size of it, because I did not measure it. If I did, I don't recall it; I don't remember the exact measurements.

Q. But, with a ship of that character from your experience and from your recollection of the frames you think that is about right? A. I think that would be about the size of them.

Q. And the 7 inches is the distance from the plating? A. Inboard.

Q. Inboard or the line that is drawn at right angles to the plating? A. Yes.

Q. Would you mind putting on this little diagram the 7 inches, to indicate more clearly what we have been referring to? A. Yes.

Q. Do you recollect whether on the frames referred to as having been bent on the starboard side there were

any reverse frames there? A. I think there were none; I am not positive of that however.

Q. How far from the stem aft is the frame No. 1? A. I don't recall that positively, but I think about 2 feet abaft the stem.

Q. And how far aft of frame No. 1 is frame 2? A. I think the frames are spaced 2 feet; I am not positive of that though.

Q. Can you state now, referring to "Libelant's Exhibit F. A. G. 1 for identification", whether the indication of dents is forward or aft of frame No. 1? A. Some of them are aft and one of them I think is forward; No. 7, I should say, was forward of frame No. 1; No. 10 is forward of frame No. 1, and No. 11 is also forward of frame No. 1, in my opinion.

Q. Referring to your numbers, are they forward or aft of frame No. 2? A. I think it is impossible to state from the photograph; that would be determined from an interior examination in making the survey.

Q. Do you recollect now what your examination showed with respect to that? A. I do not. It is my opinion, however, that No. 1 might possibly be slightly aft of frame No. 2; No. 2 also; possibly No. 3. The rest of them in my opinion are forward of frame No. 2. The ones I have referred to as being possibly abaft frame No. 2, are certainly only very slightly abaft of that frame, as indicated by the photograph, which is, as I have said before, a very poor one.

Q. Will you indicate on that photograph about where the top of the forepeak tank would be? A. I think that is more clearly shown on one of the other photographs.

Q. Well, if you prefer, refer to one of the other photographs. A. To the best of my recollection this fracture was just at the top of the forepeak tank.

Q. You are referring now to photograph "Libelant's Exhibit F. A. G. 2 for identification"; mark on that "F. A. G. 12"? A. Yes.

Q. That is at about the 23 foot mark as I make it out on the photograph? A. Approximately 23, yes.

Q. What was the thickness of the plating at No.

11 on "Libelant's Exhibit F. A. G. 1 for identification"? A. I did not measure it; I could not say. If I measured it I made no record of it. Possibly I might have measured it to see that the same size plating was returned to the vessel, but I have no record of the exact measurements taken.

Q. What is your best recollection now of the thickness of that plating? A. It is a long time ago. As I say, I have no records of what the measurements were, if they were taken. They may not have been taken by me personally.

Q. Then, haven't you any recollection of what they were? A. As I say, I have not, no, in this length of time. Probably they would be in the neighborhood of 3-4 of an inch, something of that kind.

Q. Now, did you make any measurements of the thickness of the plating above No. 11?

MR. BOGLE: I object to this line of cross-examination upon the ground it is immaterial; on the further ground it is not proper cross-examination, these matters not having been gone into on the direct.

A. If I made any measurements I have no records of them at the present time.

MR. HAYDEN—Q. Have you any recollection independently of measurements of the thickness of the plating at say No. 1?

MR. BOGLE: Let my objection run to all of this.

MR. HAYDEN: Yes. A. No more than any of the rest of it.

Q. Do you remember whether the plating was the same thickness on the port side as on the starboard side on the same strake? A. I think it would be rather unusual to find any difference in thickness.

Q. Now referring to "Libelant's Exhibit F. A. G. 2 for identification", will you please state what that photograph represents? A. It represents the starboard bow of the "Virginian".

Q. Do you know who took it? A. I think I took it myself.

Q. Where was it taken? A. That particular picture was taken at a wharf somewhere along the water

front of Seattle; just what wharf I don't know.

Q. This collision occurred Mr. Gardner, on the 12th of January, 1912, do you know how long after that date these photographs were taken? A. I have no record of the date.

Q. Have you a record of the date you were requested to leave San Francisco to make this examination? A. Doesn't this record refer to it, or does it—I don't know—"Proceeded to Seattle on January 15, 1912, and did not make survey on the SS. 'Virginian', 7914 tons gross, afloat alongside of wharf in Seattle on January 17 and subsequent dates. In dry dock at Bremerton Navy-yard on January 17, 1912. I can say that this photograph was taken sometime between the date of January 15th and January 27th.

Q. Were all of these photographs taken at the same time, that we have been referring to? A. No.

Q. "Libelant's exhibits from 1 to 4"? A. No. Those three were taken on the same date.

Q. Now, you say "those three"; you refer to Libelant's Exhibits for identification F. A. G. 2, 3 and4"? A. Yes. And this one was taken within a few days of the others, but whether before or after I cannot state positively at the present time.

Q. When you say "this one" you refer to "Libelant's Exhibit for identification F. A. G. 1"? A. Yes.

Q. Will you now take your pen and make an arrowhead and extend a line from it where the damage is shown on the starboard bow of the "Virginian" on "Libelant's Exhibit for identification F. A. G. 2"? A. The same as on this one?

Q. The same as on "F. A. G. 1", yes. A. That is a very poor photograph and does not show only those that are very pronounced.

Q. Will you please number those down from the top? A. Yes.

Q. Now, explain please what the nature of the damage was at No. 1? A. Of course I wish to have it borne in mind that this is simply an opinion based upon a very poor photograph, and so far as I can see has no bearing on the damage that was actually found by in-

terior and exterior examination of this plating.

Q. In connection with that, Mr. Gardner, if necessary, please refer to your report of survey, and if your recollection is at all refreshed by your report of survey, tell us what it is. A. As stated before, the photograph is of such a nature that it is impossible to locate the exact points by either referring to the photograph or the report, as indicated on this photograph; but judging entirely from the photograph No. 1 appears to be a fracture; No. 2 appears to be indentations. No. 3—

Q. (Intg.) Just a moment. At No. 2 you have made five arrow-heads on the line; you mean there are five indentations?

A. Five scores or indentations possibly.

Q. Shown on No. 2? A. That is what it appears to be on this photograph. No. 3 appears to be a sharp indentation. No. 4 appears to be a sharp indentation and possibly a fracture; No. 5 appears to be a fracture.

Q. Now, commencing near the waterline as shown in this "Libelant's Exhibit for Identification F. A. G. 2," I see a mark "E-2"; what does that mean?

MR. BOGLE. I object to that. The witness has stated that these marks were not placed on the photograph by him.

A. It is impossible for me to identify these marks; I don't know what they are intended for. They were probably put there by the workmen as a guide for some purpose best known to them.

MR. HAYDEN—Q. Does your recollection lead you to believe that they indicate damage at those places?

MR. BOGLE: I object to the question.

A. It appears to be numbering of plates only, to be treated in some way determined upon by a perusal of a survey report. They may have possibly been placed there after the survey report; I am sure I don't know; I don't know at this time. I may possibly have been able to have told you while the job was going on, but I don't recall at the present time just what the significance of those marks is.

Q. When you refer in your report of survey to plate No. 1, what do you mean by that? A. I mean the

first plate counting from the stem on that particular strake.

Q. Towards aft? A. Towards aft, yes.

Q. I see by the report made by you, that you have stated that the shell plating on the port side was damaged on Strakes C, D, E, F, G, H, J and K, all on plate No. 1, and the shell-plating on the starboard side at strakes B, C, D, E, F, G, H, J, K and L, all in Plate No. 1, with the exception of F-strake, where it is stated that the damage is a fracture of Plates 1 and 2. That is correct, is it? A. That is correct.

Q. Have you any data by which it can be determined where these different strakes last referred to are located on the "Virginian"? A. No, I have not in my possession.

Q. Did you commence to letter the strakes for the purpose of your report from the upper strake downward or from some other strake? A. From the bottom plate upward.

Q. From the bottom plate upward? A. Yes.

Q. Then Strake No. G would be the seventh strake from the bottom of the ship? A. Yes.

Q. And by "strake" you mean line of plating, do you not? A. Yes.

Q. Referring now to F-strake on the starboard side, your report shows that Plates Nos. 1 and 2 were fractured, and referring to F-strake on "Libelant's Exhibit for identification F. A. G. 2," from which you have drawn a line and numbered it 5, I see that that strake is marked F-1. Is that the same strake that is referred to as "F" in your survey report?

MR. BOGLE: I object to that. The witness has stated that these figures were placed upon the photograph by someone else and that he has no knowledge as to what they refer to?

A. I don't know. I simply was going to say that these numbers that you see on these plates may be identical with my report, but I have no knowledge of their having been put there from the report or whether they are identical with the report, as I did not put them there myself.

MR. HAYDEN: Q. Judging from the nature of

the damage referred to in your report as having been inflicted at Strake F-1 on the starboard side, what is your best recollection as to whether that is the same damage as is shown at Strake F-1 in "Libelant's Exhibit for identification F. A. G. 2"?

A. I have no means of comparing the two at all. I have no record referring to the report and the photographs that would enable me to recall just what the damage was. The report was simply made with a view of restoring the vessel to the condition that she was in prior to sustaining damage and whether a plate might have been fractured at the forward end or after end was not at the time considered material.

Q. Please take the photograph F. A. G. 2 and indicate thereon, if it is shown, where Plates 1 and 2 were fractured?

A. 1 and 2 on what strake?

Q. There is only one strake referred to? A. "F"?

Q. Where the plates 1 and 2 were fractured. I want to find out by that photograph where plates 1 and 2 were fractured ? A. I cannot tell you from the photograph where Strake F is.

Q. I am not asking you about the strake now, Mr. Gardner. I am asking you where plates 1 and 2 are fractured as shown by the photograph "Libelant's Exhibit for identification F. A. G. 2"? A. I cannot show it on the photograph, because that refers to strake F and the photograph does not show me where strake F is.

Q. I do not care anything about the strake at all. I only want to know where the fracture of plates 1 and 2 occurs on the starboard side of the "Virginian"? A. I again repeat that the fracture on plates 1 and 2 is stated in the report as being on strake F, and there is nothing in the photograph that will tell me where strake F is; therefore I cannot tell you where the fractures on plates 1 and 2, strake F, are. I do not want to appear obstinate in this at all, but to judge from that photograph as to the location of these strakes, the photograph would have to show the strakes and would have to show them from the bottom of the ship, and as the ship is in the water it certainly cannot show the strakes in such a way that I could determine F strake or any other

particular strake, any more than from these markings that appear on the photograph which I did not put there.

Q. I believe, Mr. Gardner, you stated a few minutes ago that figure No. 5 was in your opinion a fracture? A. Yes, it appears from the photograph to be a fracture, and I believe that fracture to be about at the tank top, the fore-peak tank top, but what strake it is on I don't know.

Q. Does that fracture appear to extend more than one plate back from the stem? A. No; it appears to be on No. 1 plate.

Q. Does it appear to be on No. 2 plate also? A. In this photograph it does not appear to be, unless that is a very short plate. I have no means of knowing the length of that plate from the photograph. If it is a short plate it might possibly extend on to the second plate. If it is a long plate it might all be on one plate. I can simply say that the photographs were very disappointing to me, as when I took them I expected to have something that I could refer to, to meet just such a case as this, so that I would be able to answer definitely where these damages were, in addition to what is set forth in the report.

Q. At the time you took these photographs did you understand that all of the damage that was visible on the starboard side was above the water as shown in these photographs?

MR. BOGLE: I object to that as immaterial, what his understanding was at the time he took the photographs.

A. No, I have no such understanding of it at all. I merely took the photographs to make a record of what damage was apparent above the water line. Even a good photograph would not show the damage below the water line or the interior damage, which is found by an interior examination.

MR. HAYDEN: Q. Did you make or have made letters on the bow of the "Virginian" to indicate the strakes that you have mentioned in your survey report? A. I did not make any letters, and to the best of my recollection at the present time I had no letters made. I might state that in examining the vessel afloat the

strakes were determined by an interior examination, to the best of my ability; I think they were then numbered from the forecastle deck downwards and then later verified in the dry dock and referred to in the manner in which plating is usually referred to in my report, as the report shows; that is my recollection of it at the present time.

Q. Was that lettering done at your request? A. No lettering necessary. This is simply notes taken.

Q. Do you remember whether the lettering referred to in your report corresponds with the lettering that had theretofore been placed on the "Virginian"? A. No, I don't remember whether it corresponded or not.

Q. Is it the usual custom with Surveyors to always count the strakes from the bottom up? A. I think it is generally recognized in ship construction that plating is lettered from the bottom up.

Q. So that if the general rule were followed and the plating were lettered from the bottom up, then the strake that you refer to as "F" will be the same as F-1 on this photograph? A. Not necessarily.

Q. I say if this custom were followed? A. Not necessarily, as in my report I have departed from the general custom to the extent of eliminating the effect of the stealers on the strakes of plating entirely to simplify that, so that in looking at it you could count from the bottom up and not refer to what effect the stealer might have on it; in other words, a stealer would cut out a plate on the bow.

Q. Looking at this "Libelant's Exhibit for identification F. A. G. 2," I notice that as far as is observed here the lettering indicates the strakes as consecutive, commencing with "D"? A. Yes.

Q. And it does not appear from this that the stealers were considered? A. The stealer may be below "D."

Q. The stealers were considered? A. It may be below "D."

Q. In what part of the ship are the stealers usually inserted? A. Depending on the width of the plates, varying with the plates. A stealer on that vessel would come about—I would expect it in the neighborhood of

"C" and "D"; I would not say positively; I could not say without seeing the shell-plating plan.

Q. Do you remember how far above the bottom strake "F" referred to in your report would be? A. I have no means of knowing at present; I made no record of it, for the reason that in the event of my having occasion to determine that I would probably go to the American-Hawaiian Steamship Company and ask them to show me their shell-plating plan. I had no reason for noting that.

Q. How would you determine from the shell-plating plan of the American-Hawaiian Steamship Company where strake F would be on the "Virginian"? A. By simply looking at it; that is the only way I know of. It would be marked on the plan.

Q. At the stem would that be 6 plate widths from the bottom on the American-Hawaiian plan?

MR. BOGLE: If you know what that plan is now, Mr. Gardner. If you have that in mind.

A. Why, I could not say positively in regard to that, but it probably would be 6 strakes up from the keel; that is as I have lettered it. It would not be lettered that way in the American-Hawaiian Steamship plan because the stealer would be taken into consideration.

MR. HAYDEN: Q. How would it be lettered in the American-Hawaiian Steamship plan? A. I can't say that positively. I don't know that they have adhere to any fixed rule or regulation in the numbering of their plates or lettering of them. However, they count from the bottom up. The plate landings and butts would all be shown on this shell-plating plan.

Q. Who had charge of the work on the "Virginian" before you arrived at Seattle?

MR. BOGLE: I object to that as being immaterial.

A. I don't know. I suppose that Mr. McGruder, their Superintending Engineer, was in charge of it. I don't recall at the present time whether he was there before I arrived or whether he came after I arrived.

MR. HAYDEN: I want to here demand the production of the plan of plating of the American-Hawaiian Steamship Company of the "Virginian."

MR. BOGLE: I do not think that is a proper demand on an examination of this witness. It does not come under the cross-examination of this witness, and I wish at this time to again object to this line of cross-examination upon the ground that it is not proper cross-examination,—going into matters which were not touched upon on the direct; on the further ground that it is an endeavor to get testimony from this witness or rather get information from this witness which is not proper at this time unless counsel desires to make the witness his own witness.

MR. HAYDEN: Is there any information of this witness you do not want to be introduced in evidence in this case?

MR. BOGLE: You know very well there is not; but I understand your object in trying to get this and using it in your case with other witnesses. If you desire to get that information you can make this witness your own witness. As long as he is a witness for respondent, I object to this line of cross-examination.

MR. HAYDEN: Q. Mr. Gardner, will the plating plan of the American-Hawaiian Steamship Company of the "Virginian" show the thickness of her plates? A. It will.

Q. And the strength of the plates is determined somewhat by their thickness, is it not? A. The total strength, yes.

MR. HAYDEN: I renew the demand on that ground too.

MR. BOGLE: Will you state just what your demand is?

MR. HAYDEN: I want the plan of the shell-plating that the American-Hawaiian Steamship Company has that has been referred to by Mr. Gardner, from which he would be able to determine where F-strake would be and also the thickness of the plates.

MR. BOGLE: So that I will understand what you desire—I do not understand Mr. Gardner to say that the shell-plating plan would show where F strake would be as referred to in his survey report. (Addressing the witness) Is that correct, Mr. Gardner?

A. I said I think that I did not think it would show

the same as my survey report in view of the fact that the stealer would probably be taken into consideration, whereas I have neglected it in my report, and F, as shown on the plating-plan and F, as referred to in my report to be the same plate.

MR. HAYDEN: Q. You said, however, that the plating-plan would show the number of plates from the bottom of the ship at the stem up to the top of it? A. Yes.

Q. And that you calculated from the bottom of the ship up towards the top at the stem when you designated the strakes by the letters that you have placed in your report; so that by taking the plan of plating that is in the possession of the American-Hawaiian Steamship Company and counting A, B, C, D, E, F, from the bottom you would find the plate that you have reference to as Plate F? A. Yes.

Q. That is at the stem? A. Yes.

MR. BOGLE: I have no objection to the introduction of this shell-plating plan at the proper time and upon proper demand, but I do not think it is proper on the cross-examination of this witness.

MR. HAYDEN: Q. Now referring to Libelant's exhibit for identification "F. A. G. 3" and "F. A. G. 4," will you state what they are? A. "F. A. G. 3" was an attempt to get a view of the both bows of the "Virginian," with very little shown. "F. A. G. 4" was an attempt to get a picture of the starboard bow of the "Virginian." Looking at this more closely I wish at this time to make a correction in my testimony relative to the time and place at which these photographs were taken.

Q. Which photographs are you referring to?

A. All four of them. I think I said that 2, 3 and 4 were taken at the same time. Looking at them now I think they were not. I think that 3 and 4 were taken during the time that repairs were being made. A very dim outline of some staging there would indicate that they were probably taken at the Seattle Construction & Drydock Company Ship-yard while repairs were being made.

Q. Now, again referring to your survey report I

notice it says about the frames on the starboard side, as follows: Frames 1, 2 and 3 fractured above tanktop, to be cut out at approved butts and renewed from points of cut to tanktop and be fitted with approved bosom pieces. Frames 4, 5, 6 and 7 badly buckled and bent above tanktop. Frame 7 to be faired in place. Frames 4, 5 and 6 to be cut at approved butts and removed from point of cut to tanktop and to be fitted with approved bosom pieces. Frames 1, 2, 3, 6 and 7 below tanktop buckled and bent, to be faired in place. No. 2 below tanktop found to be slightly fractured, to be removed, welded and returned to place. That is correct, is it? A. In addition by referring to the final report you will see that frame No. 7 was later found to be fractured at first deck immediately above forepeak tank; it is therefore recommended that this frame be cut out, partly renewed and fitted with approved bosom pieces.

Q. With that addition that you have just mentioned the matter above read about the frames on the starboard side is correct, is it? A. Yes.

Q. And showed the damage to those frames as you found it when you made your survey? A. Yes.

Q. Are the frames on the "Virginian" spaced 2 feet or 4 feet apart? A. I think they are spaced, as I stated before, 2 feet apart or about that.

Q. Then the damage to the frames extended at least 14 feet aft of the stem? A. Assuming that that spacing is correct, that would have been the distance, yes.

Q. And if the spacing were greater it would have been greater? A. It would have been greater; and if the spacing was less it would be less.

Q. If less it would be less? A. Yes.

Q. Your recollection at this time is not clear as to the spacing between the frames, is it? A. No; I had no occasion to measure the spacing between the frames for the purpose of restoring the vessel, so I don't recall what it is exactly.

Q. Would that distance be shown on the plating-plan of the vessel; that is, the distance between the frames? A. Yes, it would be shown on some plans.

MR. HAYDEN: I now wish to demand that the

building plans of the vessel showing the frame-work and the distance between the frames be produced.

MR. BOGLE: The plating plans of what vessel?

MR. HAYDEN: Of the "Virginian," the one we are talking about.

MR. BOGLE: I don't know that there are any such plans. Did the witness testify there were such plans?

MR. HAYDEN: I don't know whether there are any. I want them if there are.

MR. BOGLE: The same objection. If there are such plans we have no objection to producing them at the proper time and on proper demand, but we do object to producing them upon this examination.

MR. HAYDEN: I do not expect you to produce them today, but I would like them produced as quickly as convenience will permit; at least by the time you close your testimony.

MR. BOGLE: I have no objection to producing them on proper demand, but I do object to producing them when demand is made upon cross-examination of this witness. This part of the cross-examination is improper; the matter was not gone into on the direct examination.

MR. HAYDEN: For the purpose of further explanation and identification of Mr. Gardner's testimony I introduce in evidence the exhibits marked for identification, referred to as "F. A. G. 1, 2, 3 and 4."

MR. BOGLE: We object to them as immateial, irrelevant and incompetent.

MR. HAYDEN: Q. How big a vessel is the "Virginian"? A. I could tell by referring to the Register.

MR. HAYDEN: All right.

MR. BOGLE: It is already in the testimony.

MR. HAYDEN: I have not got it; I don't remember what the testimony was about it?

A. According to the records she is 7914 tons gross, built by the Maryland Steel Company in 1903, the property of the American-Hawaiian Steamship Company, 492 by 58-3 by 31-9.

Q. 31-9 depth? A. Yes.

MR. BOGLE: Q. You are reading from what book? A. Lloyd's Register.

MR. HAYDEN: Q. How much weight is there in a vessel of that size? A. I don't know what her displacement is.

Q. Does Lloyd's Register show that? A. No.

Q. Can you give any approximate idea of how much weight is in her, from your experience. A. No, I could not.

Q. Have you any ship constructing tables that give approximately the vessels, recognized as authorities? A. The weight of the vessel could have been determined by taking her length, breadth and draught into consideration and knowing what her coefficient of fineness is. I have not the latter data, nor do I know what her draught is.

Q. That would be shown by her plans, would it not? A. I think so; the displacement scale.

MR. BOGLE: Q. The plans would not show what she was drawing, would it? A. No.

Q. That must be always considered? A. Yes, as I stated in my answer to the other question.

MR. HAYDEN: Q. If the testimony shows that the "Virginian" was drawing 17 feet forward and she was 3 feet deeper aft, can you tell what her weight would be? A. Not without knowing her coefficient of fineness, or block coefficient; but her displacement scale would show all that.

Q. Have you ever been to sea? A. Yes.

Q. How long? A. Well, I was going to sea steadily for about between 6 and 7 years.

Q. How old were you when you commenced? A. I was about 20. I got my first license as an engineer as soon as my age would permit me to get it.

Q. That was when you were 21? A. Yes.

Q. That was a marine engineer? A. Yes.

Q. You went to sea then until you were 27? A. About that.

Q. That is as Chief Engineer? A. In various capacities, from oiler, water-tender, third assistant, second assistant, first assistant, chief Engineer; a great many trial trips in connection with war vessels for the Union Iron Works, battleships, cruisers, gunboats, torpedo-boat destroyers.

Q. The object of your examination or being in charge of the Government ships was in connection with the operation of their machinery, was it not? A. In charge of the entire vessel.

Q. Laying out her courses and navigating her? A. With the assistance of a navigator under my instructions.

Q. The navigator did the navigating of the vessel? A. Yes.

Q. And you looked after the machinery end of it? A. I looked after the entire vessel; the entire vessel was in my charge.

Q. You had nothing to do with her actual navigation at all? A. No.

Q. You never have had any experience of that kind, have you? A. No.

Q. These trial trips lasted for how long say, on the average? A. They would average about a week at a time; more than that, because we would have preliminary trials before making the final official trials; generally extend over a period of possibly a month.

Q. I believe you said that the contact of the "Strathalbyn" and the "Virginian" below the 28½ or 29 foot mark would act as a fender as the two vessels came together? A. That is my opinion.

Q. If it changed the course of the two vessels as they approached it would have a tendency to shift the head of the "Strathalbyn" in what direction? A. I did not say it changed the course of the vessels as they approached.

Q. If it changed the course of the two vessels after they came in contact with each other? A. The tendency would be to force the "Strathalbyn" to her port.

Q. You said something about the winch on the forecastle head of the "Strathalbyn" being broken? A. I don't remember that I did.

Q. Well, you remember the winch on the "Strathalbyn's" forecastle head was broken, do you? A. I don't recall that there was a winch there.

Q. Was there a capstan there, a steam capstan? A. I don't recall that there was; I would not be positive.

Q. Do you recall any steam apparatus on the fore-

castle head of the "Strathalbyn"? A. A windlass.

Q. You say there was a windlass there? A. Yes.

Q. What kind of a windlass was it? A. I don't recall the make. I think it was a Napier. I would not be sure, however.

Q. What was the appearance of it? A. Ordinary horizontal windlass such as installed aboard cargo vessels for the purpose of handling the anchors.

Q. Did you observe whether that windlass was broken? A. I think my report refers to it being broken.

Q. How was the anchor chain, the starboard anchor chain arranged on that windlass? A. It was led from the anchor up through the hawse-pipe on to the wildcats on the windlass and from there down through the chain-pipe to the chain-locker.

Q. Was the starboard wildcat broken? A. I could not say now positively without referring to the report, and I am not sure that that specifies particularly whether that was broken or not; in fact, I don't recall just exactly what the damage to the windlass was, though I remember it was damaged.

Q. Can you get that report and refer to it for the purpose of refreshing your recollection? A. Maybe some of these photographs would show it.

Q. Will you please indicate, Mr. Gardner, on "Libelant's Exhibit F. A. G. 5 for identification" the portion of the winch that was broken, taken a pen and drawing out a line from it? A. Well, the windlass was disturbed generally, and this brake device was broken.

Q. Mark it "brake device," as you go along? A. Yes, wildcat, and as I recall at the present time the shaft was found to be sprung. This does not show in this picture. The windlass was taken ashore and it was found necessary to overhaul it generally.

Q. Can you show on this photograph where the starboard anchor-chain sets in that windlass? A. About in here (indicating).

Q. Mark that "chain studding"? A. Yes.

Q. These concave places that succeed each other, going around the windlass, are sockets in which the links of the chain rested? A. Yes.

Q. The wildcat was broken on the port bow of it

and the chain torn off and carried out with the starboard wreckage, was it not? A. I think so.

Q. Now, referring to "Claimant's Exhibit 5-6," will you please indicate on that photograph—I will now say "Claimant's Exhibit 5-6" is attached to Mr. Erismann's deposition—the starboard anchor-chain that sets into the wildcat on "Libelant's Exhibit for identification F. A. G. 5"? A. Yes.

Q. Will you please indicate that by drawing an arrow out from the chain and writing the word "chain," and putting your initials after it? A. Yes.

Q. Is this wildcat a substantially made piece of machinery, pretty strong? A. Made of cast-iron.

Q. It is substantially made? A. It has every appearance of being so, yes.

Q. Strong? A. Yes.

Q. As the "Virginian's" bow was penetrating into the "Strathalbyn" the plating and rivets holding the plating and the anchor-chain and the anchor and the wreckage generally, that is on the port side of the bow of the "Virginian," would have a tendency to hold the bow of the "Virginian" from swinging to port, would it not? A. Yes, neglecting the effect of the underwater portion of the "Strathalbyn." I will add, the underwater portion of the "Strathalbyn" and that portion of the vessel below the point at which the stem was fractured.

Q. Taking into consideration the underwater portion of the "Strathalbyn" and also the portion below which the stem was fractured, would not the wreckage, anchor-chain, that was torn from the starboard side of the "Strathalbyn" have a tendency to hold the "Virginian" after she started to enter the "Strathalbyn" in the same course that she first struck her? A. It would have a tendency to hold her in the same course, but that tendency would in my opinion not be as great as the tendency would be of the portion of the "Strathalbyn" below the point where the stem was fractured to change her course.

Q. The force and effect of the tendency to prevent the "Virginian" changing her course is evidenced, isn't

it, by the damage that was done to the port bow of the "Virginian"? A. Yes.

Q. So far as the plating on the starboard bow of the "Virginian" was cut and fractured the tendency to deflect the course of the "Virginian" after she came into contact with the "Strathalbyn" would be lessened, would it not? A. From my recollection of the case, these cuts and fractures on the starboard bow were not in the way of the portion of that vessel coming in contact with the portion of the "Strathalbyn" below the point at which the stem was fractured; therefore this effect would be almost a negligible quantity, in my opinion.

Q. Is it not a fact that after the shell-plating has been pierced there will not be the same deflecting force that there was before it was pierced?

MR. BOGLE: I object to that upon the ground that the testimony does not show that the shell-plating was pierced at the point below the point where the stem of the "Strathalbyn" was fractured, which the witness testified is the portion of the vessel which deflected the "Virginian."

A. There would not be the same deflecting force if this were the portion of the vessel causing the deflection, which in my opinion it is not.

MR. HAYDEN: Q. The fracture of the plates on the starboard bow of the "Virginian" was caused, was it not, by coming in contact with some portion of the "Strathalbyn"? A. I presume that it was.

Q. How many decks are there on the "Virginian" commencing with the forecastle deck, that is, the uppermost deck at the forecastle or the upper deck? A. There is the shade deck, main deck, between-decks and tanktop, I think; I am not positive about that. I would not be able to answer that without referring to the drawings or the vessel herself.

Q. The shade-deck that you refer to is the uppermost deck on the forecastle head, is it? A. Yes.

Q. Have you any data from which you can tell me what the width of the "Virginian" is or was at the time of this collision, at the 1, 2, 3, 4, 5, 6 and 7th frames, commencing with the shade-deck and going down to her

keel at the stem; that is, I am talking about the forward part of the ship? A. No, I have not.

Q. Referring now to photograph "Libelant's Exhibit F. A. G. 3" for identification and to your knowledge of the Virginian," is it not a fact that the wider at the shade-deck and narrows as she goes down from the shade-deck to her keel at these frames, 12, 2, 3, 4, 5, 6, and 7? A. I think she does to some extent. Just what, I have no means of determining at this time, however. I made no measurements of her.

Q. Is it not a fact that the "Strathalbyn" was wider at her shade-deck say at Frame No. 4 than she was at the forecastle head-deck or main-deck? A. The "Strathalbyn" isn't a shade-deck vessel. I don't know just what you refer to as the shade-deck. I think the "Virginian" is; that was my reason for referring to her uppermost deck as the shade-deck.

Q. In referring to the "Strathalbyn" and the shade-deck of the "Strathalbyn," I used that term because you used it as the uppermost deck on the forecastle head? A. She is an entirely differently constructed vessel than the "Virginian" is. The "Strathalbyn" has a raised forecastle whereas the "Virginian" is a flush-deck vessel, and I think is termed a shade-deck vessel.

Q. I will put the question this way: Is the "Strathalbyn" wider across her at the top deck of her forecastle head than she is at her forecastle deck, being the one right below it, and the main-deck, and the one below the forecastle-deck? A. I think she is; that is at that frame. What frame do you refer to?

Q. Frame 4? A. Frame 4, yes, I think she is.

Q. Is she at frame 1? A. I think she is.

Q. If the "Strathalbyn" had a list of 6 degrees to starboard and she was struck at the root of her stem on the port side by the "Virginian" approacing her from the port, what is your opinion as to whether or not she would list any when she was struck?

MR. BOGLE: I object to that as not being based on any testimony in the case.

A. I don't understand the point referred to as the root of the stem.

MR. HAYDEN: Q. That is, the after end of the

stem, afterside or end of the stem—afterside of the stem would be better? A. Do you mean at the upper or lower part of the stem?

Q. Where in your opinion she struck, the stems came in contact? A. It is my opinion that she did not strike on the port side at all at the lower part of the stem, but at the upper part of the stem she did; in other words she struck absolutely end on and in that way in my opinion struck both sides of the stem.

Q. I understood your testimony to be that you thought the "Virginian" approached the "Strathalbyn" nearly end on? A. Yes, nearly if not quite end on.

Q. Is it your opinion that the "Virginian" approached the "Strathalbyn" and struck the "Strathalbyn's" stem in such a position that a projection of the keel of the "Strathalbyn" forward would coincide with the line of the keel of the "Virginian"? A. No. It is my opinion that a line so projected would have been on the starboard side of the "Virginian."

Q. And your idea is that if a projection of the line of the keel of the "Strathalbyn" had been carried forward, that that line would have been on the "Virginian's" starboard side? A. Yes.

Q. Considering the "Virginian," if the line of her keel were projected forward at the moment of contact, what is your opinion as to its projecting on the starboard side or port side of the "Strathalbyn"? A. On the starboard side of the "Strathalbyn's" keel.

Q. It would have projected on the starboard side of the "Strathalbyn's" keel? A. Yes.

Q. Will you please draw a diagram illustrating your answers to the last few questions? A. Well, assume that this is the stem of the "Virginian."

Q. It is the keel I am talking about? A. Well, I will have to show the stem to illustrate the point. This is the stem of the "Strathalbyn."

Q. So marked? A. Looking toward the "Strathalbyn" assuming the "Virginian" to be without list either to port or starboard, the "Strathalbyn" to be listed 6 degrees, it is my opinion that as the "Virginian" approached the "Strathalbyn" the line of her keel at the center as shown by this dot marked "keel" would be

on the starboard side of the "Strathalbyn's" keel as shown by this other dot marked "keel."

Q. That is clear as far as you have gone. I am talking about projecting the line of the keel, not the stem at all. This has got nothing to do with the stems. I am talking about the projected line of the keel. A. I understand, but the keel position is affected by the position of this.

Q. The line of the keel isn't affected by the position of the vessel? A. Its position relative to the line of the other vessel is.

Q. I am talking about the extension of the line; how far would it have continued on the starboard side of the "Virginian"? A. If as I assume she was dead on it would have been parallel with the keel of the "Virginian."

Q. Then you wish to testify that when the vessels struck each other, the keel of the "Virginian" and the keel of the "Strathalbyn" were parallel with each other? A. Practically so; that is, the line projected would have been parallel with the keel of the other vessel; the keels themselves were not parallel with each other, because one was ahead of the other.

Q. In your opinion, taking into consideration the weight of the "Virginian" and the weight of the water that she would have to displace to change her course and considering the structure of the "Strathalbyn" at her stem and bow, will you state how far the "Virginian" in penetrating the "Strathalbyn" would continue along the line of the direction that they came together in?

MR. BOGLE: I object to the question upon the ground that the witness has already stated that he did not know what the weight of the "Virginian" was.

MR. HAYDEN: I object to the objections of counsel, which are educational in their nature.

MR. BOGLE: Nothing educational about the objections. The witness has clearly stated upon repeated questions as to what the weight and displacement of the "Virginian" were, and told you what elements he would have to have in order to arrive at that and stated definitely he did not have those elements to arrive at the

displacement or weight of the "Virginian," and your question is based upon that very fact.

MR. HAYDEN: Q. Then, for the moment, I will go back to that question again: I will ask you, Mr. Gardner, if without that information you are unable to state whether or not the course of the "Virginian" when and after she struck the "Strathalbyn" would be deflected at all? A. It is my opinion that——

Q. (Interrupting) Just answer that question, Mr. Gardner, as near as you can, yes or no, and then make any explanation you want to afterward. I have asked you without that information, that is, the information as to the weight of the "Virginian" and the weight of the water that she would have to displace, you would be able to tell whether or not the "Virginian's" course would be deflected by her striking and entering the "Strathalbyn"? A. Yes, I think she would commence to deflect as soon as the stem carried away and as soon as she came in contact with the wedgeshape form of that portion of the "Strathalbyn" below the point at which the stem fractured.

Q. Now, how far would she enter the "Strathalbyn" without any deflection that would be noticeable? A. In my opinion she would start to deflect as soon as she penetrated the stem, whatever the width of the stem is; about 9 inches I think.

Q. Is it your opinion that the deflection would be a deflection at a sharp angle or in the nature of a curve? A. In the nature of a curve.

Q. You said that the effect of the lower part of the "Strathalbyn" and "Virginian" coming together would be to throw the head of the "Strathalbyn" to port? A. Yes.

Q. Would not that have a tendency to cause the "Virginian" to enter along the same line that she approached the "Strathalbyn"? A. I don't think so. I think they would be both deflected, both to port.

Q. If the head of the "Strathalbyn" were deflected to port and the head of the "Virginian" were deflected to port, there would be some compensation that would make the entrance of the "Virginian" into the "Stathalbyn" nearly along the line of their contract, would there

not? A. It is my opinion that the strength of the material not being as great above as that below on the "Strathalbyn" the deflection would begin as soon as they penetrated the stem.

Q. I do not think you uite got my question. Read the question again.

(Last question repeated by the Reporter.)

A. Assuming the strength top and bottom to be the same the tendency would be in that direction; I assume the strength above is not the same as that below.

Q. If the head of the "Strathalbyn" were deflected 4 degrees to port and the head of the "Virginian" were deflected 4 degrees to port, the line of penetration of the "Virginian" into the "Strathalbyn" would be compensated and consequently perfectly straight along the course that was being pursued by the "Virginian" when she entered the "Strathalbyn," would it not?

MR. BOGLE: I object to that question upon the ground that there is no testimony in the case such as contained in the question, and further object to counsel arguing with the witness.

A. I am not willing to admit that the deflection of the two vessels would have been the same.

MR. HAYDEN: I am only asking you to assume a situation. A. I didn't know that I was discussing an assumed situation. I supposed I was discussing the situation between the "Strathalbyn" and "Virginian" and looking at them from the standpoint and having in mind the difference in strength of the material above and below. I am still of the opinion the deflection would not have been the same on the part of both vessels.

Q. I am very glad to have your opinion, but I want your answer to my question.

MR. BOGLE: I object to the question upon the ground it is immaterial and further on the ground it is a purely hypothetical question based on no testimony in this case.

MR. HAYDEN: Answer my question. A. I do not consider the question complete in making no allowance for strength of material; but assuming the strength to be the same on both vessels above and below the point

at which the stem broke, the direction would have probably been along the same general lines.

Q. You said that the deflection of the course of the "Virginian" as it was passing through the "Strathalbyn" would be on a curve? A. I think probably it would.

Q. What would be the radius of that curve considering the length of the "Virginian"? A. What would be the length of the arc of the curve?

Q. What would be the curve's arc? A. What would be the radius of the circle of which this arc was a part; is that what you mean?

Q. Yes. A. As a mere guess I would say a circle with a radius of 60 feet.

Q. Why do you say that? A. Just guessing at it, nothing else.

Q. What was the basis for your guess? What did you take into consideration? A. The general appearance of the shape of the damaged bow of the "Strathalbyn."

Q. You did not take into consideration any factor of the length of the "Virginian" and the possibility of shifting that length in that distance? A. Yes, in addition to that, taking into consideration the length of time necessary to overcome the inerinertia of that mass to change its course of direction at all.

Q. How much time did you take into consideration? A. I think that would be practically impossible to determine.

Q. If the testimony of the Captain of the "Virginian" is true that from the moment of contact until the vessels were apart was only the length of time that he had expressed by saying "we were apart within a snap of your fingers," would you consider that length of time long enough to change the course of the "Virginian" from a course that was parallel with the keel of the "Strathalbyn" to a course that was practically 3½ points to the port of the bow of the "Strathalbyn"? A. I would certainly question—I do not see that the length of time in which they were apart after the contact enters into the problem at all. You might assume they had stopped moving.

Q. I said at the time they struck until they were apart. A. Read the question again.

(Last question repeated by the Reporter.)

MR. BOGLE: I object to that question upon the ground it does not accurately state the testimony of the Captain of the "Virginian" and on the further ground that the balance of the question is not based on any testimony in this case.

A. I think that takes into consideration the fact that a portion of the stem of the "Strathalbyn" was found practically 30 feet from its original position and the statement to the effect that the vessels were moving very slowly hardly coincides in view of the fact that probably the stem of the "Virginian" forced the stem of the "Strathalbyn" into the position in which it was found, she would have to travel about 30 feet per second and I hardly think she was traveling that fast.

Q. That is another Irish answer to my question. Will you be good enough to answer my question instead of assuming a lot of things that nobody has testified to or asked you anything about.

MR. BOGLE: That is the very objection to your question, that it contains a lot of hypothetical facts which nobody has testified to.

A. That is the difficulty in answering your question.

MR. HAYDEN: Q. The point is, that is my question, Captain Gardner. Mr. Bogle has put his objection into it. It is for the Court to determine these questions of fact. It is my question that you are to answer, if you do not mind trying to answer it.

A. I am trying to answer it if you would put it in such a way that I could answer it.

Q. You can answer my question and then if you wish to make an explanation afterwards you can make it. Answer my question, if you will be good enough to.

A. Give me the question again and see if I can understand it.

(Last question repeated by the Reporter.)

A. My answer is no. Following that, with your permission, I will repeat, that I do not consider that the vessels could have been going at the speed as indicated

by the condition of the bows of the two vessels, and the statement of the Captain to the effect that the time elapsing was represented by the snap of your fingers.

(By consent an adjournment was here taken until tomorrow, December 5, 1913, at 9:30 a. m.)

Friday, December 5, 1913, 9:30 a. m.

F. A. GARDNER.

Cross-examination resumed:

MR. HAYDEN: Q. Mr. Gardner, if the "Strathalbyn" and the "Virginian" struck directly head on with the keel of the two vessels on parallel lines, if the lines of the vessels were extended, what would be your opinion as to whether or not it would cause the "Strathalbyn" to list?

MR. BOGLE: The "Strathalbyn" to list which way?

MR. HAYDEN: I am asking the question.

A. Shall I assume in answering that she already had a list of 6 degrees to starboard?

Q. Yes. A. I think it probably would have a tendency to increase that list.

Q. Even if they struck directly head on? A. Yes, that is due to the penetrating material and the deflection of the bottom part of the "Strathalbyn"; in that way I should consider that the keel of the "Strathalbyn" would be forced to port and the upper deck forced to starboard.

Q. That would give an increased list to starboard on the "Strathalbyn"? A. I would think so.

Q. Would you think that would cause a heavy list to starboard or a slight list to starboard on the "Strathalbyn"? A. I should imagine it would cause a pretty heavy list to starboard; in fact it would be a sort of twisting effect on the "Strathalbyn," I should think.

Q. It would have the tendency then to heavily roll her keel around to port? A. To port.

Q. And the upper works to starboard? A. That is my opinion.

Q. Have you ascertained since we stopped last night anything more about the form, shape of the bow, of the "Virginian," its sharpness of bluntness? A. No.

Q. As the keel of the "Strathalbyn" would be listed or swung to port by the contact with the bow of the

"Virginian" that would have a tendency to lessen the deflecting force on the course of the "Virginian," would it not? A. Slightly, I should think.

Q. It would depend on the ease with which the "Strathalbyn" gave to this pressure, would it not? A. I think so.

Q. The listing of the "Strathalbyn" by reason of the facts above stated would also have a tendency if the vessels were sharp at the bow to cause the bows or the stems of the vessels to pass each other a considerable distance before any deflecting would take place, would it not?

MR. BOGLE: I object to that. The testimony in this case does not show either one of these vessels were sharp at the bow.

A. I stated in one of my other answers I am of the opinion that the deflection began as soon as they had passed the stems of the vessels.

MR. HAYDEN: Q. What do you assume would be the total deflection in points or degrees of the "Virginian" taking the course that you assume she did take and continuing that course as she struck and entered the "Strathalbyn"? A. I think that the question is impossible to answer, and I do not think that the course remained the same after she struck, that it was continually changing.

Q. I want the total change of course in degrees from the point of contact on the stems of the two vessels until the stem of the "Virginian" passed out of the "Strathalbyn"? A. As a mere guess I should think that possibly the "Virginian" by the time she passed out of the "Strathalbyn" had changed her course possibly 20 degrees.

Q. 20 degrees? A. 15 or 20 degrees.

Q. That is simply a mere guess? A. That is a mere guess. I do not think that I could answer it positively.

Q. If I remember correctly the testimony of Mr. Duffy, the Pilot on the "Virginian," it was that the "Strathalbyn" and the "Virginian" were together, that is, from the time they struck until the "Virginian" had passed into the "Strathalbyn" and backed away again,

for a few seconds; the testimony of Captain Crerar is from 15 to 30 seconds, and the testimony of Beecher, I think is about a minute; I think that is the testimony; they ranged from the snap of the fingers—the time given ranges from a snap of the fingers or something that would be indicated by the snap of the fingers given by Captain Green of the "Virginian" to a minute given by Mr. Beecher. Assuming that that is the time now from the time the vessels struck each other until the "Virginian" has done her damage and backed away, what would you say would be the effect of the blow on the "Virginian" to change her course in 30 feet 20 degrees as to shock? A. I think the shock would have been considerable.

Q. You think it would have been very noticeable on the "Virginian," do you? A. I should think it certainly would have been noticed.

Q. What would you say as to the extent that it would be noticed?

MR. BOGLE: Q. If you can answer that question, Mr. Gardner, from the facts that he has given you?

MR. HAYDEN: Naturally, I expect him to do that.

MR. BOGLE: If you cannot, say so.

A. Which of these three different times given me am I expected to take into consideration?

MR. HAYDEN: Q. Any of them and explain which one you are taking into consideration when you are giving your answer. A. If it were done in the time represented by the snap of the fingers, it would have been very noticeable; had it taken a minute it would not have been so noticeable by considerable.

Q. It would not however be called ordinarily a slight shock, would it? A. I think not.

Q. Even with a minute it would not be called a slight shock, would it?

MR. BOGLE: I object to that. Slight shock might mean an entirely different thing as stated by different men. What the witness might call a slight shock and what another witness might call a slight shock might be entirely different; that is a relative term.

A. The yielding of the material on the two vessels

would have lessened the impression given I should imagine as to its being a heavy shock; therefore it might possibly have been described as a slight shock, if the time extended were a minute, I should think.

MR. HAYDEN: Q. I am not talking now of the yielding of the material. Just keep in mind the question that is asked, if you can, Mr. Garder. I ask you if the course of the "Virginian" were changed 20 degrees in a distance of 30 feet, in the time of a minute, would that cause a slight or severe shock to the "Virginian"? A. With a mere change of the course, I do not consider it would cause any very great shock.

Q. In the course of a minute? A. In the course of a minute, neglecting the contact of the two vessels.

Q. Would you consider the change of the course of the "Virginian" would cause a shock, changing that course I mean 20 degrees, within from 15 to 30 seconds? A. Not the mere changing of the course, no.

Q. Can you change the course of the "Virginian" 20 to 30 degrees in the course of 15 to 20 seconds by contact with a loaded ship without causing a shock? A. Contact would cause a shock, certainly.

Q. Would that shock be a severe shock or a slight shock?

MR. BOGLE: I object to that. The witness has not stated that there was any possible change of 30 degrees.

A. I should think it might be described as being a rather severe shock.

MR. HALDEN: Q. Didn't you take any pictures of the "Strathalbyn" when she was in the dry-dock at Esquimalt? A. I believe I did.

Q. I want to see if you have got a picture there that shows a certain thing. Would you mind letting me see what you have? A. No.

Q. Mr. Gardner, looking at these photographs attached to Mr. Jack's deposition, "Libelant's Exhibit X 18," what caused the part that is shown in the exhibit with the port anchor-chain hanging to it to assume the position that it is now in? A. Well, as I said before, I think the upper part of the stem was struck on the port side, and as the vessel passed it hauled this plate around

before it finally parted and was left in that position when it finally did part.

Q. What caused it to assume the position it is now in? That is, to bend and remain in that location? A Due to the fact that it had been pulled around by the stem of the "Virginian" as it took the stem of the "Strathalbyn" past its points of elasticity and naturally remained there.

Q. Did you notice whether or not any of the beams were bent on the "Strathalbyn"? A. My recollection is that some of them were bent.

Q. Is it your opinion that this bending of the upper part of the stem of the "Strathalbyn" around on to the starboard side and the lower part of the stem of the "Strathalbyn" to the port was caused by the contact with the side of the "Virginian"?

MR. BOGLE: I object to that upon the ground that the photograph does not show the upper part of the stem as bent to the starboard side. The witness has not so testified.

MR. HAYDEN: Q. To make it clear, instead of saying the upper part of the stem was bent to the starboard side, we will say the plating on the bow was bent over to the starboard side? A. I think probably the bending was caused by coming in contact with the bows of the "Virginian" as she entered into the "Strathalbyn." As I said before, I think that it was forced over by the original blow.

MR. BOGLE: Q. You are speaking now of the upper part? A. Of the upper part.

MR. HAYDEN: Q. And the lower part? A. And the lower part I think was forced over by the lower part of the "Virginian."

Q. That is, the starboard side of the "Virginian" coming in contact with the lower part of the stem of the "Strathalbyn" forced it over so that the lower part of the stem of the "Strathalbyn" coincided with the plating on the stem of the "Virginian"; is that it? A. I think so.

Q. How far below the 29-foot mark or 28-foot 6 mark, where the break in the stem of the "Strathalbyn" appears, did the stem and plating appear to be bent over

to port? A. My recollection is that it was affected practically down to the forefoot.

Q. How far does the forefoot come up above the keel? A. Probably 4 feet, as near as I can recall.

Q. I understood you to say yesterday that they renewed the stem of the "Strathalbyn" from the 14-foot mark up? A. I don't recall making that statement.

Q. Do you know how far it was from the windlass on the forecastle head to the stem of the "Strathalbyn"? A. No, I do not.

Q. Do you know how near the starboard end or wildcats of the windlass on the forecastle head of the "Strathalbyn," the forecastle-deck, was cut away? A. I don't recall now, no.

Q. Mr. Gardner, you said that you understood that you appeared in the interests of both Underwriters. I would like to know the reason for your so understanding? A. Well, I was sent to the two vessels by Lloyds' Agents in San Francisco, whom I supposed were representing the both Underwriters, and I said in my testimony yesterday I later had a letter from Lloyds' Agents instructing me to return to the "Strathalbyn" to follow up her repairs.

Q. Do you know whether Lloyds' Agents asked you to do that on behalf of the "Virginian" or on behalf of the "Strathalbyn"? A. I don't know positively.

Q. You do know that Lloyds had some insurance on the "Virginian," do you not? A. No, I do not. I do not know anything about the insurance of these vessels at all any more than I was led to believe that there was insurance on them.

Q. You said you were aboard of the "Strathalbyn" in Tacoma after the major portion of the forward deck load was on her? A. Yes.

Q. And you and Captain Gibbs went aboard of her. Do you remember that I met you at the dock and we went over in the same launch? A. I believe we did.

Q. At the time that you and Captain Gibbs were over there, they were still putting the deck cargo, forward-deck cargo on the "Strathalbyn," were they not? A. Yes.

Q. They had not completed loading? A. They had not quite completed, apparently.

Q. They had not at that time put any lashings on either the deck-cargo or the stanchions, had they? A. I would not be positive as to that.

Q. They were however still loading the deck cargo over the side of the vessel? A. Yes.

Q. What is the usual time of lashing the cargo on, after they complete the loading or before? A. I do not consider myself competent to answer questions relative to proper methods of loading vessels; it does not come within my province.

Q. You would not wish to state then that when the deck-lashings were put on the cargo and the lashings on the stanchions were drawn up, the stanchions would not be within the lights?

MR. BOGLE: I object to that; he has not testified as to when the loading was completed, when the cargo was loaded.

MR. HAYDEN: I accede to your suggestion. You needn't answer the question. Where did you stand on the forecastle head of the "Strathalbyn" and look aft and see the lights? A. At the break of the forecastle and afterside of the forecastle, I think.

Q. On which side? A. On both sides.

Q. Did there appear to be any difference in the view of the lights from either side? A. I did not notice any difference.

Q. You said the light, if I remember correctly, would be deflected with the stanchions in the position they were in 15 degrees—10 to 15 degrees? A. Yes.

Q. From the center of the light? A. That is merely an opinion. I made no calculation. I don't know that it could be made.

MR. BOGLE: I do not think he said from the center of the light.

MR. HAYDEN: I have a note here, at a point parallel with the center line? A. The center line of the ship is what I referred to.

Q. Now, at a point parallel with the center line, what point did you take to commence with, to get your parallel? A. By sighting along the stanchions.

Q. Did you take the stanchions to be parallel with the keel? A. Not entirely, no.

Q. Well, I would like to know what point you started with,—whether the light or where you were standing as the particular point? A. I looked at it from various positions; at sometimes from a point aft looking directly over the light-screens and at other times from the forecastle-head and looking aft toward the light-screens.

Q. You are talking about a line parallel with the keel. I want to know how far up from the keel that line would be located, or if you can not give the distance, what point on the ship you located that line? A. Approximately 15 feet, I should say from the center line—15 or 16 feet. Of course it would depend entirely on memory; it is very difficult to state the distance as I made no measurements of the vessel. We noticed there was a point where the light-screens seemed to be obscured. The vessel has a considerable tumble home.

Q. Was that point 15 or 16 feet from the center of the keel outside of the line of stanchions or inside of the line of stanchions, through which you drew your line to get a parallel? A. I should think it would be about the center of the stanchions.

Q. About the center of the stanchions? A. Yes.

Q. Now, as a matter of fact, the deck of the "Strathalbyn" is narrower towards the break of the poop than it is at the break of the house, or where the lights are. At what point between the break of the house and the break of the forecastle would your parallel line run through on the rail, half way or a third way? A. It would not be on the rail at all; it would be inside of the rail.

Q. Well, inside of the rail. A. It would be parallel with the center line of the ship.

Q. When you said the light would be deflected 10 or 15 degrees, did you figure that that deflection would be measured from the lamp? A. From the lamp, yes.

Q. That is what I am trying to get at. Then your parallel line would be from the lamp, would it not? A. From the lamp to the point on the forecastle forward, from the point that I took as being parallel with the

light-screens to a similar point on the forecastle, that I could not see the screens at all.

Q. You were paying considerable attention, were you not, to the light-screens and the possible obstruction of the stanchions of the lights? A. As I stated before in my testimony, it was merely called to my attention by the fact that the repairs on the forecastle head caused me to be there and happening to look aft while I was on the forecastle, and not being able to see the screens I thought it was well to call Captain Gibbs' attention to it; he is interested in loading cargoes on the Sound, and I asked him to come over and look at it.

Q. The only time that you knew Captain Gibbs was on the vessel to take a look at the lights was the time that you and he went on there while they were loading? A. That is the only time I have any knowledge of, yes.

Q. And you and he were there only once together looking at them? A. To the best of my recollection we were only there once; that is, for that purpose. I was there from day to day while they were making these repairs on the forecastle-head, as I stated before.

Q. How closely did you follow these repairs, Mr. Gardner? A. More with a view to seeing that the repairs were completed, to see that they had been completed; they were of minor importance, but still necessary to restore the vessel to the condition that she was probably in before she sustained damage. The only item that occurs to me at the present time was a mooring-chock that had not been fitted in place.

Q. That is at Tacoma? A. At Tacoma.

Q. But at Esquimalt you also followed the repairs, did you not? A. Yes.

Q. Some of the bills in this case bear your signature; if I remember correctly, the expression is "Approved subject to adjustment"? A. Yes.

Q. I understand that that "subject to adjustment" means the average adjustment?

MR. BOGLE: I object to that. Ask the witness what it means. He signed them in that way.

MR. HAYDEN: Q. Is that right? A. In a general way that I suppose is what the intention is.

Q. What do you understand to be the effect of approving bills subject to adjustment? A. Merely that the bills are correct to the best of my knowledge and belief and are left subject to such adjustments as may be found necessary.

Q. Where would that adjustment take place and what would be the nature of it? A. I don't know.

Q. I now call your attention to "Libelant's Exhibit X-3," being a bill of the British Columbia Railways Company, dated "Victoria, B. C., March 7, 1912," and ask you if that is your signature? A. Yes.

Q. I will ask you if what I am now to read is in your handwriting, viz: "Approved subject to adjustment, F. A. Gardner, Surveyor for Underwriters"? A. Yes.

Q. Wherever you so approved any of the bills what was your understanding at the time you approved them of the term "Approved subject to adjustment"? A. It indicated that I had seen the work performed and in my opinion the bills were correct. Whether they were chargeable to damage account or owner's account, or whatever it might be, was subject to adjustment on the part of the adjusters.

Q. Mr. Gardner, do you remember whether there was any difficulty in looking over the light-screens on the "Strathalbyn" by reason of the location of the boat-davits immediately back of the light-screens on the port side? A. I don't recall any material difficulty at the present time.

Q. The first boat-davit aft of the after end of the light-screen is how far from the aft of the end of the light-screen? A. (Interrupting) I don't know.

Q. You have no recollection of that at all? A. No.

Q. The beams on the "Virginian" are separated and connected by frames running across the ship, are they not? I am talking about the beams of the forward part of the "Virginian" around the bow or stem? A. The beams run across the deck, under the deck.

Q. What are they connected with? A. Connected by brackets to the frames.

Q. Has every frame a beam connecting it? A. I think not.

Q. In the lower part of the ship has it? A. I am not positive of that, however.

Q. The decks are fastened to the beams, are they? A. Yes.

Q. What kind of decks did they have—of what kind of material were they made in the "Virginian"? A. Steel-decks.

Q. Do you know the thickness of the plating? A. I do not, no.

Q. Approximately do you know? A. No.

Q. When you speak of breast-hooks, what do you mean by that? A. It is a steel plate connecting stringers at the forward end of the ship.

Q. And the stringers are what? A. Longitudinal stiffeners.

Q. And the breast-hooks connecting stringers with what? A. With each other.

Q. The stringers are how far apart? A. I don't recall what distance apart the stringers were. There is a stringer on each deck, and below the lower deck there are other stringers; how many there are or how far apart they are, I don't recall.

Q. Do the breast-hooks connect the ends of the stringers together or do they connect the stringer above to the one below? A. Connect the ends of the stringers together.

Q. On the "Virginian" at what depth did you find the lowest damage to her on the starboard side? A. I don't recall at the present time. There was some damage below the forepeak tanktop; just how far I don't recall just now.

MR. HAYDEN: I think that is all.

RE-DIRECT EXAMINATION.

MR. BOGLE: Q. Mr. Gardner, I hand you a report of the Steamer "Virginian" dated January 29, 1912. Is that a true copy of your report of survey? A. It is.

MR. HAYDEN: As far as the reports are concerned, referring to the recommendations, and what is purely hearsay, I do not want to be understood as stipulating that that may go in as Mr. Gardner's testimony, but simply as far as it refers to the damage he observed.

MR. BOGLE: I understand that; I am willing that that should not be considered as part of the exhibit.

Q. Is that a true copy of your report of survey on the steamer "Virginian"? A. To the best of my knowledge and belief it is, yes.

Q. That is the copy from which Mr. Hayden has been examining you at this hearing, is it not? A. Yes.

Q. I hand you a report of survey on the steamer "Virginian" dated February 17, 1912; is that a correct copy of your original report of survey and final report of survey on the steamer "Virginian"? A. Yes.

MR. HAYDEN: I would like you to try and get the original, if you can possibly anywhere, to see as a matter of fact that the original is the same as this; there may be some slight changes by interlineations or otherwise, I don't know.

MR. BOGLE: We can cover that by stipulation.

(It is stipulated by the parties that the original reports of survey may be introduced in evidence by either party in place of the carbon copies which have been identified, the original reports to bear the same identification number.)

MR. HAYDEN: Subject of course to the above objection as to hearsay statements in the reports?

MR. BOGLE: Yes.

Q. Mr. Gardner, referring to "Libelant's Exhibit for identification F. A. G. 1, 2, 3 and 4", I will ask you if those photographs enable you to accurately state the damage to the steamship "Virginian"? A. No, they do not.

Q. In testifying from these photographs are you testifying from your actual knowledge of the damage or from what the photographs apparently show? A. From what the photographs apparently show.

Q. In making your survey of the damages state just what examination you made in order to arrive at the exact nature of the damage to the "Virginian"? A. Well, I visited the ship on two or more occasions and took a record of the material found to be damaged through observing this material from the outside of the

vessel as far as it could be seen and by going down into the vessel's hold, forepeak tank and so forth.

Q. Is it possible, Mr. Gardner, to arrive at the exact nature of the damages without an interior examination of the plating of the ship? A. No, because a plate may appear to be bent on the outside and an interior examination will disclose the fact that it is fractured on the inside.

Q. Does your survey of damage that has been produced here as "Libelant's Exhibit for identification Y-1" accurately show all of the damage that you found in the steamer "Virginian"? A. I think it does, yes.

Q. Does that show any damage which you could not ascertain from those figures? A. Yes.

Q. In speaking of photographs, I mean "Libelant's Exhibits F. A. G. 1, 2, 3 and 4"? A. Yes.

Q. Mr. Gardner, you stated upon your cross-examination that you did not make any drawings affecting the repairs on the steamer "Virginian". Did anyone to your knowledge make any such drawings? A. Not that I have any recollection of.

Q. Is it necessary, Mr. Gardner, to make such drawings in order to effect the necessary repairs and place a vessel in the same condition that she was before the collision? A. There may be some details that it would be advisable to make sketches of before proceeding with the repairs.

Q. Do you refer to any particular details? A. I do not recall any in connection with this particular case that would be necessary to make sketches of, to enable them to make repairs.

Q. In order to sufficiently replace broken or fractured plates, frames and so forth, is it necessary to make drawings of the injured or damaged plates and frames? A. No, measurements can be taken from the plates and frames themselves.

Q. Is it customary for surveyors in charge of repairs to make such drawings, Mr. Gardner? A. I really could not testify as to the custom prevailing on that point.

Q. Is it your custom to make such drawings? A.

I make drawings occasionally, but I do not see that it could be considered to make drawings in connection with making these repairs.

Q. From your examination of the damage to the "Virginian" and the "Strathalbyn" could you state the comparative strength of the plates and frames, the structure of the two vessels? A. Only in a very general way; I should say that the general structure of the "Strathalbyn" was considerably lighter than that of the "Virginian."

Q. In speaking of the plating plans of the American-Hawaiian Steamship Company, what did you refer to? Do they have one plan of plating covering all vessels, one that applies to all vessels owned by them? A. I don't know what they have in their possession; but they probably have a plating plan showing the sizes of the plates and the pitch of rivets and the shape of the plates.

Q. What I am getting at in connection with that is Mr. Hayden's demand. I want to find out whether they have one plan that applies to all vessels or whether each vessel has a separate plan? A. Each vessel would have their own plating plan.

MR. HAYDEN: Mr. Bogle, it is with respect to the "Virginian", not any other boat, that I made demand.

MR. BOGLE: I am trying to get concrete information in order to comply with your demand if I deem it necessary, in making a request upon the American-Hawaiian Steamship Company.

Q. On your cross-examination you stated you were at sea for seven years in various capacities, and in connection with your work in the Union Iron Works that you had charge of trial trips, builders' trips of various vessels. Did your connection with those vessels and your connection with the Union Iron Works cover any construction and repair work? A. Yes. It covered construction work prior to trial trips and repair work in many cases after trial trips.

Q. What was your connection with the work? A. That of general supervision.

Q. Mr. Gardner, referring to "Libelant's Exhibit

for identification F. A. G. 5", which, as I understand, is the windlass on the forecastle deck of the "Strathalbyn", where was that windless placed on the forecastle deck; do you remember how far aft from the stem? A. No, I don't. I made no measurements of its exact location.

Q. Where was it placed with respect to the amidships portion of the forecastle deck; in other words, was it on the starboard side or port side? A. I suppose it was on the amidships line; they usually are. I made no measurements to ascertain whether that was absolutely a fact or not. That is on the fore and aft line.

Q. It would be practically amidships? A. Yes.

Q. Is there any portion of this windless which is known as the drum of the windlass? A. I don't know of any part of the windlass that is usually referred to as a drum, unless it might be the wildcat,—not a wildcat but a gypsy; that is not shown here; that might be called a drum. Sometimes a windlass is equipped with an extension to the main shaft with a gypsy, and that may be called a drum; that is used for warping vessels in.

Q. Where would that be located? A. It would be on the end of this shaft going through.

Q. It would be at the extreme righthand side? A. Probably near the righthand side, and one on the lefthand side where the gypsy was fitted to the windlass; they are usually so located.

Q. It does not show in that exhibit? A. No,—at least I do not see it, and I do not recall whether it was so fitted, or not.

Q. Mr. Gardner, I believe you testified that the chain, anchor-chain, would set in the portion that you have marked "chain-setting" here? A. Yes.

Q. And would then run aft? A. It would run forward to the hawse-pipe.

Q. Run forward to the hawse-pipe and there connected to the anchor? A. Yes.

Q. The anchor hangs over the side of the ship, or hangs in the hawse-pipe? A. I think in this case that the anchors were stowed in the hawse-pipe; I don't recall positively; sometimes they are stowed in the hawse-pipe

and sometimes they are stowed on the billboard on deck. I think in this case, however, they were stowed in the hawse-pipe; perhaps this photograph will show that.

MR. CAMPBELL—Q. A patent anchor? A patent anchor stowed in the hawse-pipe.

MR. BOGLE—Q. The contact of the vessels carrying away the starboard plating and structure at the line of the forecastle deck would of necessity carry the anchors with it, would it not? A. Yes.

Q. That would necessitate the running of the chain, dragging of the chain? A. Dragging the chain over the wildcat.

Q. I think you stated on cross-examination that the tendency of the wreckage on the starboard side, which would include the plating and this starboard anchor and the anchor-chain would have a tendency to hold the "Virginian" in the course in which she struck? A. To some extent, yes.

Q. And that the tendency of the lower plating of the "Strathalbyn", which I understand in your testimony, is stronger than the upper structure, would be to throw her off to port? A. By "her" you refer to the "Virginian" I suppose?

Q. Yes. A. Yes.

Q. And the resulting deflection of the "Virginian" if any would depend upon the relative strength of the materials exerting these tendencies; that is, the relative strength of the upper materials compared with the lower materials? A. I think so.

Q. What is your opinion as to the resulting tendencies on those two forces as to deflecting or holding the "Virginian" in her course? A. The resulting tendency would be to deflect the "Virginian" to port, in my opinion.

Q. In answering one of Mr. Hayden's questions you estimated, as you said, as a mere guess, the "Virginian" might have been deflected 15 or 20 degrees after she came in contact with the "Strathalbyn"; that is correct, is it? A. As near as I can judge.

Q. I understand it is a mere guess? A. Yes.

Q. How did you arrive at that conclusion, Mr.

Gardner, that is, of placing your figure at 15 or 20 degrees; in other words, what do you take into consideration in arriving at that estimate? A. By drawing a mental picture of the general condition of the vessels' bows after the damage.

Q. Would the extent of deflection of the "Strathalbyn" have any bearing upon the extent of the deflection of the "Virginian"? A. I think so, because I took into consideration that she was probably deflected also.

Q. Could you estimate the amount of deflection on the part of the "Strathalbyn"? A. I would say due to the yielding of the material on the "Strathalbyn" that she would not have been deflected to the same extent that the "Virginian" was, and also due to the fact that she was a loaded vessel and the "Virginian" was in comparatively light condition.

Q. Would it not be a fact that if the "Strathalbyn" was deflected more than that the "Virginian" would be deflected less? In other words, have you taken the actual deflection of the "Virginian" or have you taken the damage and estimated from that the deflection of the two vessels? A. My answer to Mr. Hayden's question was as applied to the "Virginian" only, and did not take into consideration any deflection of the "Strathalbyn".

Q. If the "Strathalbyn" was deflected to any appreciable extent would your answer as to the deflection of the "Virginian" be any different? A. No, I think not.

Q. On cross-examination by Mr. Hayden, he asked you a hypothetical question which I understood—I may be mistaken—in which he asked you what the effect on the "Strathalbyn" would be if the "Virginian" had struck the after side of the "Strathalbyn's" stem—did you understand what he means by the after side of the stem? A. I understand what the after side of the stem would be, yes.

Q. Do you think it possible for the "Virginian" to have struck the after side of the "Strathalbyn's" stem if they were approaching each other in a direction from head on or nearly so? A. Not absolutely the stem of

the vessel itself; they might have struck the plating on the after side of the stem if they were striking at right angles or something of that kind.

Q. Could she have struck the after side of the stem from any direction except approximately a right angle? A. Yes, I think she could have struck it at an angle less than a right angle, that is, struck the plating.

Q. I mean the after part of the stem itself? A. No, I don't think so.

Q. I think you said that if the "Virginian" struck the "Strathalbyn" end on, that the keel of the "Virginian" and the keel of the "Strathalbyn" were parallel at the time of contact, not the keels themselves but that lines drawn and extended from their keels— A. (Intg.) Would be parallel.

Q. Would be parallel? A. Yes.

Q. Of course that would only apply if they struck absolutely head on? A. And with the vessel listed, the "Strathalbyn" listed.

Q. I understood from your testimony that it is your opinion that they struck absolutely head on? A. Practically so, I think.

Q. If the "Virginian" struck at any angle on either bow, no matter how small, would their keels be parallel? A. No, I think not.

Q. I think you also stated that a line drawn forward from the keel of the "Strathalbyn" at the time of collision would have been on the starboard side of the "Virginian"? A. I did.

Q. That, Mr. Gardner, is due to the list of the "Strathalbyn", is it not? A. Yes.

Q. If there had been no list the keels would have been directly in line? A. Yes.

Q. If, as a matter of fact, the "Virginian" was not deflected to any appreciable extent by the collision, what would you say, considering the nature of the damage to the two vessels, as to the deflection of the "Strathalbyn" caused by the collision? A. There probably was some deflection of the "Strathalbyn".

Q. I understand that it is your opinion that there

was some deflection on the part of both vessels? A. That is my opinion, yes.

Q. Mr. Gardner, Mr. Hayden asked you a purely hypothetical question, which I understood to be approximately as follows: That if the "Strathalbyn" was deflected 4 degrees to port by the collision and the "Virginian" was deflected 4 degrees to port by the collision, if the deflection of the two vessels would not be compensated so that the line of approach would be approximately the same, so there would be no deflection. (Addressing counsel.) Am I mistaken in that?

MR. HAYDEN: That is practically it.

MR. BOGLE: Q. Now, Mr. Gardner, if that had been a fact, would not the deflection of the "Strathalbyn", 4 degrees to port, and the deflection of the "Virginian" 4 degrees to her port, have had the tendency of throwing the two vessels in entirely diametrically opposite positions from each other? A. I probably did not understand Mr. Hayden's question, referring to compensating for direction. I took it as meaning the line of force being in that general direction; but as a matter of fact, I think as you state, the vessels would be deflected in opposite directions.

MR. HAYDEN: Q. My question was if when the bow of the "Virginian" entered the "Strathalbyn" and continued in if it would not continue along a line that would be practically the same line that it would if there was no deflection? A. I don't think that it would. I did not understand the question in that way.

MR. BOGLE: I did not understand what Mr. Hayden meant by the compensation. A. I took it as meaning the line of force being in that general direction.

Q. If as a matter of fact the two vessels were deflected 4 degrees each to their port, would not the effect of that be to throw their bows away from each other? A. I think it would, yes.

Q. If at the time of this collision the "Strathalbyn" had a list of 6 degrees to starboard, if the "Virginian" struck her, which you stated to be your opinion, practically end on, would not the list, resulting list on the "Strathalbyn" depend somewhat on the strength and the yielding of the materials? A. Yes, I think it would.

Q. I don't know whether I correctly understood you, but my impression is you stated in answer to Mr. Hayden's question it would increase her list to starboard? A. That is my opinion, yes.

Q. What would be the effect of the bluff of the bow of the "Virginian" coming in contact with the upper structure of the "Strathalbyn" as she proceeded into the "Strathalbyn"; in which direction would that tend to list the "Strathalbyn"—the bluff of the "Virginian's" starboard bow? A. The bluff of the "Virginian's" starboard bow would have a tendency to right the "Strathalbyn", in my opinion.

Q. And would list her in what direction? A. To right the list that she already had to starboard and bring her more in an upright position.

Q. By the resulting list to port, you do not mean that she would necessarily overcome the 6 degrees to starboard list? A. No, I don't think that she would overcome the starboard list but the tendency would be towards port.

Q. And what would tend to list her to starboard? A. The bow coming in contact with the material that was later found hanging out on the starboard bows of the "Strathalbyn", the stringers and decks and so forth, that she penetrated.

Q. Would it not be a fact then, Mr. Gardner, that the resulting list of the "Strathalbyn" would depend upon the relative strength of the materials, that is, the result of the two tendencies?

MR. HAYDEN: I would like to object to this line of investigation of Mr. Gardner as an expert unless he furnishes us with the data accurately on which to estimate this resulting force; that data must consist of knowledge of the structure of the two vessels, the thickness of her plating, their general construction, and a statement of the resulting forces on one side or the other, as well as the resistance.

MR. BOGLE: I am perfectly willing to stop this line of examination if you are willing to strike from the record the portion of your examination on the same lines.

MR. HAYDEN: I move to strike out Mr. Gard-

ner's re-direct testimony along the same lines as the last question. I will state that that in the cross-examination I wish to remain in evidence to show the fact that Mr. Gardner had not taken into consideration the data that I am now requiring him to take into consideration on re-direct testimony.

MR. BOGLE: I am not asking Mr. Gardner as to his knowledge of such data. I am asking him if that data would not have some effect upon the answers which he has already given upon your cross-examination. Read the question. (Last question repeated by the Reporter). A. I think it would.

Q. Would not the amount of shock noticeable aboard the "Virginian" as the result of this collision depend upon the resistance of the materials of the "Strathalbyn" and also upon the speed of the two vessels at the time of the collision? A. It would, in my opinion.

Q. Have you any information within your knowledge from which you could make any sort of accurate estimate as to the amount of shock noticeable on the "Virginian" as a result of this collision? A. I have not.

Q. Mr. Hayden asked you on cross-examination if the lower part of the "Strathalbyn's" stem did not coincide with the "Virginian's" plating. I confess that I did not quite understand the question. I wish you would explain that answer you made to it, Mr. Gardner. A. Well, assuming that the "Virginian's" bow was ot more or less wedge-shape taken from the deck, shade-deck down to the keel, if the stem were forced over to port by the starboard bow of the "Virginian", the angle of that stem as it came to rest would coincide with the angle of the plating of the bow of the "Virginian",— as I understood the question. That was my idea in answering it in that way.

Q. Would that be the "Virginian's" bow as she came to rest? A. As both vessels came to rest.

Q. The "Virginian's" bow in your opinion deflected the lower part of the "Strathalbyn's" stem? A. That is my opinion. By the lower portion I mean the upper part that was attached to the vessel's keel; not that part that was carried away entirely and on the side of the "Strathalbyn".

Q. You have heretofore stated that that portion of the "Strathalbyn's" stem was one of the tendencies to deflect the "Virginian's" course? A. Not the stem alone.

Q. I say one of the forces? A. One of the forces.

Q. As the two vessels came to rest the plating of the "Virginian" would be in contact with the lower portion of the stem of the "Strathalbyn" and in a general way that stem would be in the shape of that portion of the "Virginian's" plating; is that what you mean by that? A. That is my idea; but referring to the upper portion of that remaining on the "Strathalbyn", not clear to the forefoot, because the pressure of the "Virginian" against that upper portion of the stem remaining on the ship would have a tendency to bend it below the point the two vessels were really in contact, probably.

Q. I believe that you stated that you were Lloyd's Surveyor? A. Surveyor to Lloyd's Registry.

Q. Is it or is it not common for such surveyors to be called in to survey both vessels which have been damaged, as you were called in in this case? A. Yes.

Q. On "Libelant's Exhibit for identification X-3" which you signed "Approved subject to adjustment, Fred A. Gardner, Surveyor for Underwriters", I also notice the statement "Approved without prejudice", signed "William H. Logan, Surveyor for Underwriters". I wish you would state who Mr. Logan is, and what his connection is?

MR. HAYDEN: I think that has already been gone into.

MR. BOGLE: We will put it in again. A. Well, I understood Mr. Logan—

MR. HAYDEN (intg) I object to what you understand. I want to know what you know.

MR. BOGLE: Q. Who is Mr. Logan?

MR. HAYDEN: Q. Of your own personal knowledge? A. Captain Logan to my own personal knowledge has had charge of work for the London Salvage Association, and to the best of my knowledge and belief was acting in that capacity on this particular occasion.

Q. What is the meaning there of "Approved without prejudice", "Surveyor for Underwriters"? A. I don't know the meaning of that expression.

Q. Do you know in what capacity Mr. Logan was acting in approving these bills in that manner? Did you understand that he was acting for the owners or for the Underwriters?

MR. HAYDEN: I object to what Mr. Gardner understood. I want to know what he knows.

MR. BOGLE: Go ahead and answer it, Mr. Gardner? A. My understanding was that Captain Logan was representing the Underwriters, as my instructions were to cooperate with Captain Logan, and my understanding was that I was representing the Underwriters.

Q. Was that the Underwriters on one or both vessels?

MR. HAYDEN: I object to that. He has already explained that. A. In this particular case the Underwriters on the "Strathalbyn".

MR. BOGLE: Q. I notice also in this same exhibit this notation: "O. K. Charles P. M. Jack". Who is Mr. Jack? A. Mr. Jack stated to me that he represented the owners of the "Strathalbyn".

Q. Is that an ordinary and common way for a surveyor representing the owners to approve bills? A. I see nothing unusual about it.

Q. Mr. Gardner, in sighting along the line of the stanchions on the "Strathalbyn" in the harbor at Tacoma at the time you have testified to, I believe you said that you sighted at least once from a position on the light-screens or the light-box. What I mean is, you were upon the lower bridge aft of the light-screens and light-box and sighted along the line of the stanchions? A. Yes.

Q. Is or is it not a fact Mr. Gardner, that the light-screen on a vessel, the inboard light-screen is required to be constructed so that it should be parallel with the line of the keel of the vessel? A. I think it is required that it should be so constructed.

MR. HAYDEN: I object to that upon the ground it is not the best evidence and a mere surmise on the part of Mr. Gardner; I move to strike out the answer.

RE-CROSS EXAMINATION.

MR. HAYDEN: Q. Ordinarily two vessels striking end on, would the lighter loaded vessel, the lighter vessel, receive a greater shock than the heavier loaded vessel? A. Yes, assuming the strength of the vessels to be the same and neglecting the yielding of materials.

Q. The yielding of the material would have a tendency to lessen the shock on the vessel whose material yielded, would it not? A. I think so, yes.

Q. You don't know anything about the speed of the two vessels at the time they came together, do you? A. I do not.

Q. You said, Mr. Gardner, that you believed these vessels struck practically end on, that is, so that the extension of the line to their respective keels would be parallel with each other? A. Yes.

Q. What do you mean by "practically"?

MR. BOGLE: I object to that question; he has stated exactly what his opinion as to the angle of contact was. A. Neglecting any technical or microscopic measurement that might be taken in connection with a matter of that description, as would be viewed from a practical standpoint.

MR. HAYDEN: Q. Then there might be some variation in the line of the keel as extended as they struck each other from the parallel? A. Not from a practical standpoint, in my opinion.

Q. Well, when you say practical, you mean that the "Virginian" might have been approaching the "Strathalbyn" either from the starboard side or the port side? A. It is my opinion that she was approaching the "Strathalbyn" from directly ahead.

Q. So that if the "Strathalbyn" had been upright and the "Virginian", when the "Virginian" struck her there would have been no crossing of the stems of the two vessels? A. No.

Q. The "Virginian's" stem would have struck the whole length of the "Strathalbyn's" stem? A. Probably, with the exception of the difference due to the differences in draught of the two vessels.

Q. You don't know, do you, the overhang of the stem of the "Virginian"? A. I do not know positively,

but it is not enough to attract your attention in looking at it ordinarily.

Q. Your idea is that it would have been possible for the "Virginian" to have approached the "Strathalbyn" from the port side of the "Strathalbyn" and for the "Virginian's" stem to have struck the plating on the port side of the "Strathalbyn" back of the aft side of the "Strathlbyn's" stem and inflicted the damage that has been testified to,—is it?

MR. BOGLE: I object to that. As I understand the question, it is exactly what the witness has not testified to.

THE WITNESS: I will ask to have the question read once more; it is a little bit confusing to me. (Last question repeated by the Reporter). A. I do not consider that it would have been possible for the "Virginian" to have inflicted the damage to the "Strathalbyn" that she sustained by striking her on the port side abaft the stem, as in my opinion, the lower part of the "Strathalbyn's" stem would have also been carried to starboard.

MR. HAYDEN: Q. What did you mean when you said to Mr. Bogle that the vessels might have approached each other from an angle less than right angles or an angle between a right angle and the line of the keel of the "Strathalbyn" projected directly ahead?

MR. BOGLE: I object to that as it does not state the witness's entire answer on that point. A. My answer was simply to illustrate the possibility of the "Virginian's" striking the plating of the "Strathlbyn" in the neighborhood of the after side of the stem.

MR. HAYDEN: Q. Coming at the "Strathalbyn" from what angle? A. Less than a right angle.

Q. How much less? A. Or a right angle.

Q. How much less? A. Possibly 45 degrees less.

Q. I want to ask you if the direct supervision of the work at the Union Iron Works, where you were employed, the direct supervision of ship-building as conducted in the Union Iron Works was not under the Master Shipbuilder, and not yourself? A. In the case of repairs it was directly under myself.

Q. In cases of construction how was it? A. In cases of construction it was under the General Manager

and Superintendent of the Ship-yard, but repair work came directly under my supervision, in many cases.

Q. You stated that the stem of the "Virginian" was bent back. Do you remember how far it was bent back? A. Enough to be noted without taking measurements.

Q. Well, that does not give us a very good idea of it? A. Enough to attract attention.

Q. Does it show in that photograph? The photograph I am referring to is "F. A. G. 2"? A. Without any other knowledge of the case I would not be able to detect it in the photograph.

Q. Now, you say it was perceptible to the eye. Have you got a clear idea of it? Can you tell us how far it was bent back? A. To the best of my recollection it was bent back in the neighborhood of an inch, or an inch and a half; I don't recall just how much; I remember it was enough so that it would attract attention, and required straightening.

FURTHER RE-DIRECT EXAMINATION.

MR. BOGLE: Q. Mr. Gardner, Mr. Hayden asked you if the lighter loaded vessel or heavier loaded vessel would receive a greater shock at the collision; would not that also depend upon the weight and displacement of the relative vessels as well as the degree of loading? A. The weight of the vessels would have to be taken into consideration, the weight and size of the vessels.

Q. Would not the answer to that question depend upon the weight of the vessel including cargo, the relative weight of both vessels including the cargo? A. Yes.

Q. Mr. Hayden also asked you if the yielding of material would not lessen the shock of the vessel on which the material was yielding. Is or is not it a fact that the yielding of material on one vessel would also lessen the shock on the vessel which is entering her? A. Lessen the shock on both vessels, in my opinion.

Q. After the "Virginian" had struck the after part of the stem of the "Strathalbyn" on the port side at any appreciable angle could it have caused the damage which was inflicted on the "Strathalbyn"? A. In my opinion it could not.

(Filed Dec. 24, 1913.)

WILLIAM H. SMITH, having been produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Merritt) What is your full name?

A. William H. Smith.

Q. Where do you reside?

A. Portage, Washington.

Q. What is your business?

A. Master of steam vessels.

Q. How long have you been a master or held a master's license? A. Four or five years.

Q. And have you been during any of that time running on Puget Sound and adjacent waters?

A. I have.

Q. Were you an officer of the steamer "Daring" on January 12, 1912? A. I was.

Q. What officer were you? A. First officer.

Q. Were you on watch on the "Daring" on the evening of January 12th, 1912, in going into Tacoma?

A. I was.

Q. About what time were you due in Tacoma that evening? A. Well, I can't state that definitely.

Q. Well, about?

A. About 6:45 or in that neighborhood, I would judge.

Q. I understand you to say you were navigating the vessel going in? A. I was, yes sir.

Q. Where were you? A. In the wheel house.

Q. In going into the harbor that evening did you see any other vessel?

A. Only the one that crossed our bow.

Q. What first called your attention to that vessel?

A. Well, first I heard two whistles, and then the next was I discovered a dark object ahead, and about that time the captain stepped out from his room and asked why I didn't answer the two whistles, and I told him that—

MR. HAYDEN: (Interrupting) I object to any testimony as to that conversation between the captain and yourself, on the ground that it is hearsay.

Q. (Mr. Merritt) You need not state the conversation.

Q. Did you answr the two whistles?

A. Eventually, yes sir.

Q. Did you at the time when you first heard them?

A. No sir.

Q. Why didn't you?

A. Because I didn't recognize where they came from.

Q. Could you see the vessel from which they came?

MR. HAYDEN: I object to that as leading.

Q. (Mr. Merritt) Answer the question.

A. Just state that again.

Q. I say, could you see the vessel that gave these whistles?

A. Well, I will have to say no, under the circumstances, without explaining.

Q. What was the first thing that you did see of the vessel, and whereabouts did you see her, if you saw her?

A. Well, she was pointed out and at about the same time it was apparent to me that the dark object was opening out lights, and I was convinced, then, that it was a vessel.

Q. Did you see any lights on her? A. I saw two.

Q. Where were they and what kind of lights?

A. They proved to be on the forward part of the vessel, white lights; and about the time I answered or eventually answered the two whistles, the one light—lower light disappeared, and I concluded it was a lantern over the side where they had been clearing their anchors or something of that kind.

Q. That was a white light, was it? A. White light.

MR. HAYDEN: I move to strike out the conclusion of this witness.

Q. (Mr. Merritt) I will ask you, from what you saw of this lower white light, what it appeared to you to have been, what kind of a light, where did it appear to you to have been?

A. It appeared to have been over the bow of the vessel.

Q. And what kind of a light?

A. White light, perhaps an oil light; that was a conclusion.

Q. Where was the other light that you speak of that you saw, with reference to the—

A. It was a higher light.

Q. And how did the two lights compare as to brilliancy? A. Both about the same.

Q. And I will ask you whether or not either of these lights were bright lights, or not?

A. No, they were not.

Q. Did you see any side lights of the vessel at that time? A. Not at that time, no.

Q. Did you afterwards see any side lights?

A. We did.

Q. What side light did you see?

A. A green light.

Q. And where were you with reference to the vessel when you first saw this green light?

A. Right abeam.

Q. Just go ahead and describe what you did with the "Daring" and what the other vessel did after you first heard these whistles?

A. Well, when I answered the two whistles I put my wheel astarboard, to run clear of the vessel that was ahead of me and apparently crossing my bow.

Q. When you put your wheel to starboard that threw your vessel to port, did it? A. Yes sir.

Q. And what was the action of the other vessel?

A. Well, she was swinging at the time—swinging up onto a course for Brown's Point.

Q. About how close did you get to her before you could see this green light?

A. Well, we saw the green light when it was dead abeam and possibly 500 feet—not to exceed 500 feet from her.

Q. What kind of a light was it as to being bright or otherwise? A. It was a very dim light.

Q. Could you tell in any way whether it had been obscured from you before you got up close to it, whether there was anything to obscure it, shut it out?

A. Well, merely a matter of conjecture concerning the deckload that she had on her.

MR. HAYDEN: I object now to this witness testifying as to his conjecture.

Q. (Mr. Merritt) Could you see the outlines of this vessel as you got closer to her? A. Yes sir.

Q. What kind of a vessel was it?

A. She was an ocean-going steamer.

Q. Large or small? A. Very large steamer.

Q. Could you see whether or not she carried any deckload? A. Yes sir.

Q. Did she? A. She did have.

Q. Did you meet any other large ocean-going steamer, going into the harbor that night?

A. No sir.

Q. Was there anything at that time that attracted your attention to these lights and to the character of the lights that you saw on the vessel? A. Yes sir.

Q. What?

A. First, that they were very dim, and the green light didn't show up until we were right abeam; since the vessel having crossed our bow and swung up into a position parallel with us, it was something to be noticed.

Q. What kind of a night was it? A. Clear night.

Q. As I understand you say she was crossing your bow how, from port to starboard or starboard to port?

A. Well, from starboard to port—she was showing her starboard side to us.

Q. Showing her starboard side to you? A. Yes sir.

Q. Then she would be crossing from the left to the right of your vessel?

MR. HAYDEN: I object to your telling him how she was crossing. I move to strike the question.

A. She was crossing our bow with her starboard side to us.

Q. (Mr. Merritt) How would she be going, from left to right or right to left of your vessel then? I say, would she be going, from the right to left or from left to right of your vessel?

A. She would be going to left.

Q. Do you mean going to the left or from the left?

A. What do you call—

Q. (Interrupting) From port to starboard or starboard to port, which?

A. She was passing to our starboard.

Q. To your starboard?

A. On our starboard side, yes sir.

Q. Did you see any range light? A. No sir.

Q. Did you ever see the red light? A. No sir.

Q. Could you tell whether these lights were electric or oil lights, that you saw? A. No, I could not tell.

CROSS EXAMINATION.

Q. (Mr. Hayden) Where was the "Daring" coming from on this night?

A. From Brown's Point into Tacoma, on the run between Seattle and Tacoma; she was on the mail run.

Q. And you saw this vessel after you got beyond Brown's Point? A. Yes sir.

Q. How far beyond Brown's Point?

A. I should judge we were about in the middle of the harbor.

Q. About in the middle of the harbor. Where was this vessel, then, when you first saw her?

A. She was just about across the entrance of the City Waterway when I first saw her.

Q. Just about across the entrance of the City Waterway? A. Yes sir.

Q. How far from the entrance of the City Waterway?

A. Well, I would have to guess at that; I would say less than a half a mile.

Q. Less than a half a mile. And you saw her when you came around Brown's Point?

A. No, that was the course we were on.

Q. From Brown's Point, and you saw the—

A. (Interrupting) We were about half way in the harbor.

Q. You were half way between the entrance of the City Waterway and Brown's Point, then; is that what you mean? A. Yes sir.

Q. And this vessel that you saw, when you first saw her, was about a half a mile from the entrance of the Waterway? A. Yes.

Q. How long after you saw the vessel was it before you heard her whistles?

A. Well, I heard her whistles before I saw the vessel.

Q. Oh. The vessel then must have proceeded some distance from the entrance of the City Waterway towards your position in the harbor before she blew her whistles or before you saw her after she blew her whistles? A. Yes sir.

Q. You didn't see any masthead light on this vessel, did you?

A. Well, what eventually assumed to be a masthead light, yes sir.

Q. Shown in what way?

A. After the vessel had swung around into position so that we would see the fore and aft light, as it were, then we knew of course that it was the masthead light.

Q. Then as a matter of fact you did see a masthead light on this vessel? A. Yes sir.

Q. You say that masthead light was very dim?

A. Yes sir.

Q. Have you any idea how far it could be seen?

A. No.

Q. You haven't any idea. Now, you say that you saw two white lights; one of those you think was a lantern and the other was the masthead light?

A. Yes sir.

Q. There was one lantern that was hanging over the bow, and the masthead light that you saw on this vessel?

A. I said that the lantern, that was the conclusion that I came to.

Q. Was hanging over the bow?

A. Was over the bow, yes sir, or the light we saw was a lantern that perhaps had been used for taking in the anchors.

Q. You didn't see a red light at all? A. No sir.

Q. Consequently you don't have any idea whether the red light could have been seen or not?

A. No sir.

Q. That side of the vessel was not toward you—

A. (Interrupting) No sir.

Q. (Continuing) —so that you could have seen it?

A. No sir.

Q. The green light you say you could not see over 500 feet? A. Well, I didn't state that way.

Q. You didn't mean it to be so understood, then?

A. I said we were in the neighborhood of perhaps 500 feet apart when the green light showed up.

Q. When you saw the green light, you mean?

A. Yes sir.

Q. Not when it showed up, but when you saw it. You were busy talking with the captain of the "Daring" and paying attention to your whistles and doing other things, were'nt you, aboard the vessel?

Q. But that was afterwards, the conversation the captain and I had.

Q. Was after this—

A. (Interrupting) After we had blown our whistles.

Q. That was after you had seen the green light?

A. No sir.

Q. It was before you had seen the green light?

A. Yes.

Q. Your conversation with the captain of the "Daring" was before you had seen the green light?

A. The conversation began before I saw the green light, yes sir.

Q. So you were busy blowing your whistle and talking with the captain before you saw the green light?

A. Yes sir.

Q. And the first time that you did see it was when you were directly abreast of the "Strathalbyn"?

A. Directly abreast, yes sir.

Q. Was that off the "Strathalbyn's" beam or off your beam? A. Off both our beams.

Q. So the boats were both parallel with each other?

A. Yes sir.

Q. And abeam of each other? A. Yes sir.

Q. Do you mean to say that you could not have seen that light from a point ahead of that position?

A. We didn't see it.

Q. Do you mean to say that you could not have seen it from a point ahead of that position?

A. I could not say that. It did not show up.

Q. As a matter of fact you did not see it from a point ahead of it? A. We did not.

Q. You said this green light was very dim, I believe? A. Yes sir.

Q. You used the word "very"? A. "Very."

Q. How far would you say you could see the green light?

A. Well, I have not thought about comparing distances.

Q. You don't know, then, how far you could have seen the green light? A. No sir.

Q. How old are you? A. Twenty-five.

Q. And where have you been going to sea?

A. On Puget Sound, and Alaska.

Q. On steamboats on those runs?

A. Steamboats, yes sir.

Q. On the inside run to Alaska, principally.

A. And the Bering Sea.

Q. Ever been before the mast as a sailor on a ship?

A. I have.

Q. On sailing ships? A. No sir.

Q. On steamers? A. Steamers.

Q. And when did you start to go to sea? A. 1895.

Q. You say you saw this steamer before you saw her lights; is that right? A. Yes sir.

Q. What kind of a hull was this steamer—what was the color of it? A. Well, I said a dark object.

Q. A dark object? A. Yes sir, dark.

Q. You could see this dark object even before you could see these white lights?

A. Well, they were both determined about the same time.

Q. You made out the object before you made out the lights, I believe you said. A. Yes sir.

Q. This was at night time you saw this?

A. Night time.

Q. And you mean to say to the court that you could see that object further than—that black object further than you could see those lights, do you? A. Yes sir.

Q. All right. Why could you see a black object further than you could see lights?

A. Covered the lights of the city.

Q. Oh, she covered the lights of the city?

A. Yes sir.

Q. So the other lights were not covering the lights of the city, is that it—the lights on the "Strathalbyn" were not covering the lights of the city?

A. The white lights were not.

Q. The white lights were not?

A. They were intermingled.

Q. Oh, intermingled with the lights of the city?

A. Yes sir.

Q. Therefore the white lights might have been perfectly visible for a long distance and you not see them because they were intermingled with the lights of the city; is that right?

A. They might have been would the position not have been changed.

Q. But the position was changing all the time?

A. Yes sir.

Q. Then why didn't you see the white lights, with its changing position as against the city lights, as well as to have seen the dark hull as against the city lights?

A. Well, the dark hull covered the city lights, while the white lights would intermingle with the city lights.

Q. But the white lights you say were moving; the city lights were not moving—white lights were not moving, were they?

A. You don't understand. I said the motion of the vessel showed when she began opening out the lights, showed there was a motion, and in that way I could discern the vessel itself.

Q. I see. But you say you could not discern the motion of the lights on the "Strathalbyn"? A. No sir.

Q. The "Strathalbyn's" lights were moving with the "Strathalbyn," weren't they?

A. Yes sir.

Q. And they were moving against the lights of the city— A. Yes sir.

Q. —just the same as the body of the "Strathalbyn" was moving against the lights of the city, if you had noticed them? A. Yes sir.

Q. As a matter of fact you did not happen to notice them; is that it?

A. Well, I noticed them, but they were—

Q. (Interrupting) I mean you did not happen to notice them as soon as you noticed the "Strathalbyn"?

A. No, no, I could not tell.

Q. (Interrupting) You would not say you could not see them further than you could see the hull of the "Strathalbyn," would you?

A. Yes sir. I could not see the lights further than I could see the hull of the "Strathalbyn," because of the fact that by changing your position in the harbor, no matter what position one might be in, there is always —the city lights, one would disappear and another one come in, another disappear and another come in, and so on and so forth, and in that way; I consequently would not have noticed and did not notice her white lights at the time that I could see the hull.

Q. Well, now, what I want to get at is,—you did not notice them—I appreciate that point, but you don't mean to say that if you had noticed them that you could not have seen them before you saw the—

A. (Interrupting) Yes sir, I could have seen them.

Q. You could have seen them, had you noticed them, further than you could have seen the dark hull of the ship, couldn't you?

A. I believe I could, in the position we were in.

Q. The lights were not so dim that you could not see them— A. (Interrupting) Oh, no.

Q. (Continuing) —any considerable distance?

A. They were burning.

Q. They were burning so that they could have been seen quite a distance too, weren't they, if you saw them; you realized that fact, didn't you?

A. Well, no, I realized that they were a very dim light.

Q. I didn't ask you whether they were very dim or not; that is a matter of comparison. A. Yes sir.

Q. I am asking how far you could have seen them?

A. Well, I would only have to guess at that; I don't know.

Q. Yes; you don't know. A. No.

Q. Have you ever had any experience with lights that burn oil, that is, that you know are burning oil, as compared with lights that you know are burning electricity? A. Yes sir.

Q. Looking at those lights at a distance, that is what I am asking you? A. Yes sir.

Q. What steamers on the Sound are burning oil in their side lights or masthead lights?

A. Well, I could not tell you right now. There is one, for instance the "A. W. Sterrett," she has now electric lights, but there was a long time she had oil lights on her.

Q. You knew she had oil lights? A. Yes sir.

Q. And you were accustomed to see those oil lights?

A. Yes sir.

Q. Now, any other steamers that you are accustomed to seeing oil lights on, that you knew were burning oil lights?

A. There were quite a number of little tow boats that did, and some had—

Q. (Interrupting) Some little launches with very small lights also burn oil in their lights, or do they all burn electricity?

A. No, there is quite a number of them I know burn oil.

Q. You know, as a matter of fact, that there is a big difference in the appearance of an oil light from an electric light, do you not? A. Yes sir.

Q. Side light. The electric lights are very much brighter lights? A. Yes sir.

Q. Don't you know that an oil light will show through a fog further than an electric light will show?

A. No, I don't know it.

Q. Don't you know there is sort of a halo around an electric light that there is not around an oil light?

A. Yes sir.

Q. That is true, is it not?

A. Yes sir. That is getting into science, with me.

Q. I am not talking about science, I am talking about what you have seen.

A. That is just a comment, is all.

Q. I am just talking about what you have seen?

A. Yes.

Q. You say you blew two whistles?

A. Two whistles.

Q. Before you saw the lights on the steamer?

A. Before I saw her side light, yes sir.

Q. And why did you do that? A. Orders.

Q. From whom? A. Captain.

Q. And why did he give you such orders?

A. Why, he no doubt had picked out the vessel before I had.

Q. Picked out the side light before you had?

A. No, I could not see the light, not the side light.

Q. You don't think he picked out a side light before you did?

A. No, we both saw the light at the same time.

Q. Now then if he saw the vessel, you think that is the reason that he gave the two whistles?

A. Yes sir.

Q. Or ordered you to give the two whistles?

A. Yes sir.

Q. Don't you think it was because you received two whistles from the other vessel?

A. Well, that is in response to the two whistles, he heard them blown and—

Q. (Interrupting) When you receive a whistle—

MR. MERRITT: (Interrupting) Let him answer. Go ahead with your answer.

Q. Mr. Hayden) You heard them blown?

A. Yes sir.

Q. And in response to them you blew two whistles; that is what you mean to say?

A. Ultimately, yes sir.

Q. When you blew your two whistles, which way did you put your helm?

A. Put my helm down to starboard.

Q. Down to starboard?

A. Yes sir. The wheel of course went port, but the helm itself went starboard.

Q. And that threw the bow of your vessel which way. A. Away from the object approaching.

Q. Away from the object approaching? A. Yes.

Q. Threw it to port? A. To port.

Q. Now, that is what you always do, isn't it, when you blow your whistle, the rule is to port your helm?

A. Yes sir.

Q. And so when you hear a whistle from another vessel and you want to pass her, if they whistle the two whistles you blow two whistles and port your helm; that is right, isn't it? A. Yes sir, that is correct.

Q. So probably it was in response to the two whistles that you had heard from the "Strathalbyn" that you blew your two whistles and ported your helm, wasn't it? A. Yes sir.

Q. And that was before you saw the "Strathalbyn" —I don't say "Strathalbyn"—this vessel that you are talking about. A. Yes sir.

Q. That is before you saw her that you gave the two whistles in answer to the whistles from this vessel?

A. Well, that I might say would be simultaneous; about the time I blew the whistles then I picked the—

Q. (Interrupting) Are you positive that you saw this vessel at the time you blew these two whistles or after the time you blew these two whistles?

A. Well, I am positive, of course, that I saw the vessel, as far as that is concerned, before I blew the two whistles, but I did not answer the two whistles that she blew, because I didn't know in the first instance where the two whistles came from nor what would be the object in blowing two whistles to me. As a matter of conjecture of course in my mind at the time I didn't know.

Q. Don't you know what the object of blowing two whistles is to an approaching boat?

A. If you know you are the vessel, but it could have been or it would not have been an impossibility for to have been blowing to some other vessel.

Q. In the harbor there? A. Yes.

Q. You could not tell just where this sound came from in the harbor? A. No.

Q. Whether it was ahead of you or one side of you or the other. A. No sir.

Q. Now—

A. (Interrupting) Well, say, I will have to retract that statement. I knew that the sound was ahead.

Q. Then you knew it was from a vessel ahead?

A. Yes sir.

Q. Was there any other vessel between you and where this sound came from? A. No sir.

Q. Did you have your windows down in the wheel house? A. Yes sir.

Q. Which side were you standing on?

A. At the starboard side.

Q. That would be the side nearest the boat that you were approaching? A. It was, yes sir.

Q. You had no trouble, did you, when you once saw this white light, telling it was a masthead light on the vessel that you met?

A. Well, I don't know just how to answer that.

Q. Wasn't it in the regular position of a masthead light? A. I would answer yes to that question.

Q. So when you saw this masthead light you knew it was a masthead light, did you not?

A. Well, I say that was the conjecture.

Q. Well, if it was in the position of a masthead light, you must have known it was the masthead light?

A. You see providing the masthead light was out and she had a range light burning, that would just as well have been a range light.

Q. Providing it was out, but I am not providing it was out.

A. Well, if she only had the one light.

Q. You could tell it was up in the mast without any trouble at all?

A. Oh, yes, in the mast.

Q. You could tell it was in the mast without the slightest trouble?

A. I could tell it was in the fore part of the vessel after it swung around and in a parallel position with us.

Q. And the reason you say you don't know whether she had a—whether it was the masthead light is because you think it might have been a range light?

A. It would not have been an impossibility.

Q. It would not have been an impossibility?

A. No.

Q. But there was no difficulty in telling that it was a light up in the mast, at any time, was there? A. No.

Q. Now, did you notice this light flaring up and going out? A. No.

Q. It was a steady light burning at the time you saw it, was it? A. Yes sir.

Q. Was the side light steady as long as you saw it?

A. Yes sir.

Q. How far above the water is the deck of the wheel house of the "Daring"?

A. Well, it is perhaps 18 feet.

Q. 18 feet. So your height above the water would have been 18 feet plus the height of your body?

A. It may have been it is 15 or 18 feet, in that vicinity.

Q. How tall a man are you?

A. Five and a half—five six and a half.

Q. How? A. Five six and a half.

Q. I was talking about the deck of the wheel house, the distance from the deck of the wheel house to the water, on the "Daring", and you understood me—

A. (Interrupting) You mean the floor of the wheel house?

Q. Yes.

A. Well, I would say perhaps 12 or 14 feet.

Q. 12 or 14 feet? A. Would be the floor.

Q. Now then, what is there above the floor of the wheel house, anything to elevate it, a man standing there, does a man stand right on the floor of the wheel house?

A. Stands right on the floor of the wheel house.

Q. And you were leaning out of the window, were you, or standing inside of the wheel house when you were looking? A. Inside.

Q. And were you standing upright or leaning out of the window—

A. (Interrupting) I was standing upright.

Q. When you were looking for this vessel?

A. Upright.

Q. You say you passed this vessel about 500 feet off? A. Approximately, yes sir.

Q. I believe you said this vessel was crossing your bow. How do you know that to be a fact, if you could not tell which way she was going—heading, until you got opposite her?

A. Well, I said that the lights—the changing position of this dark object in reference to the city lights, in that way I could discern that it was a moving object and it was crossing our bows.

Q. In other words, if this vessel was leaving about opposite the entrance of the City Waterway and was going around Brown's Point, being a large steamer she would take a wider course to go around Brown's Point, that is, she would give more room to Brown's Point than you would take being in a small boat like the "Daring"?

A. Yes sir.

Q. And you were coming in to the Municipal Dock? A. No, we landed at the N. P. Dock.

Q. In coming in to the N. P. Dock, as you came closer around Brown's Point you would be sort of cutting across the course that would naturally be taken by this bigger steamer; that is about the situation, isn't it? A. Yes sir.

Q. So that under those circumstances the only possible position would be that this steamer and you were practically head-on, if you were coming toward this steamer with this steamer's right hand side toward you; that is the only situation that you can figure out under the— A. (Interrupting) Yes.

Q. (Continuing) —movements that were being carried out by these two ships. Now, in looking at these lights on the ship that you met, are you able to say now whether they were electric lights or oil lights, from your experience in connection with the—

A. I believe they were oil lights.

Q. You believe they were oil lights?

A. Yes sir.

Q. Because they burned more like oil lights, did they?? A. Yes sir.

Q. They had more the appearance of oil lights burning?

A. Yes sir, that is the fact that I mentioned a few minutes afterwards.

Q. The fact you mentioned a few minutes afterwards was that they appeared to be oil lights?

A. Yes sir.

Q. Is that what you mentioned a few minutes afterwards? A. Yes sir.

REDIRECT EXAMINATION.

Q. (Mr. Merritt) You were asked why you blew these two whistles, and you answered that you did it under orders from the captain. A. Yes sir.

Q. Did the captain state to you at that time any reason why he ordered you to blow these two whistles?

MR. HAYDEN: I object to that as immaterial and hearsay.

Q. (Mr. Merritt) Answer the question. Did he give you any reason? You were asked why you blew it and why the captain ordered you to blow these two whistles. A. Yes sir.

Q. Did he give you any reason why he told you to blow the whistles. A. He did.

Q. What was it?

A. Well, he could see the vessel and the position she was in and he could see that I was not going to blow a whistle until I saw a signal light.

Q. By a signal light you mean what?

A. The green light, which I demanded to know at the time, I demanded to know where his light was at the time. I didn't know what to blow at. That is the remark that was made.

Q. And could you see the green light at that time?

A. No sir.

Q. Could you see it until after you had blown these two whistles? A. No sir, it was after I—

Q. (Interrupting) I say until afterwards?

A. Until afterwards.

Q. Were you looking for it? A. Yes sir.

Q. Did you continue to look for it until you saw it?

A. Yes sir.

Q. Did you see it in watching this object before you had got to this position of not over 500 feet, as you say? A. No sir, got right abeam.

Q. Now, you gave some testimony as to the possible distance you might have seen these two white lights. Could you have seen, in your opinion, the higher light any further than you could have seen the lower light?

MR. HAYDEN: I object to that as cross examining his own witness. He said he could not tell how far he could see it, he never figured it out.

MR. MERRITT: I am asking him to compare the two lights.

Q. (Mr. Merritt) Answer the question, whether you could have seen, in your opinion, the higher light any further than you could have seen the lower light of the two white lights?

MR. HAYDEN: I object to the question on the ground that he says he does not know how far he could have seen either of them.

Q. (Mr. Merritt) Answer the question.

A. Well, you will have to read that question, please.

(Question read.)

A. Well, I will have to say yes, because the white light is supposed to show further than the green light or than your colored lights are.

Q. Well, I am not talking about comparing the white with the green, I am talking about and asking you to compare the two white lights, the light that you say or think was the lantern hanging over the bow and the light you thought possibly was the masthead light; could you see what you thought was the masthead light any further than you could see what you thought was a lantern? A. No sir.

Q. You say you were watching for these side lights all the time? A. I was.

RECROSS EXAMINATION.

Q. (Mr. Hayden) Was this lantern a very dim lantern too? A. Yes sir.

Q. That was a very dim lantern too?

A. Dim light, yes sir.

Q. It was not the ordinary brilliancy of an ordinary lantern, was it, in your opinion? A. No sir.

Q. No, it was a dim lantern; that is the one you think was hanging over the bow?

A. There were two lights—

Q. (Interrupting) I am talking about a dim lantern. You think it was a dim lantern, do you, more dim than the ordinary lanterns are?

A. Well, no, because oftentimes with an electric

plant aboard a vessel one can have—in that instance they could have had an electric light over the bow of the vessel; but so far as my knowing the facts only in my own mind and making a comparison—

Q. (Interrupting) If this was an oil lantern, was it dimmer than the ordinary oil lantern?

A. Well, it was—

Q. (Interrupting) It was an ordinary bright oil light, was it?

A. Yes sir, it was an ordinary light, apparently an oil light, yes sir.

Q. Apparently an oil light and ordinarily bright for an oil light, was it? A. Well—

Q. The lantern, in your opinion, now?

A. In my opinion it was a dim light.

A. I am not talking about it compared with an electric light. A. No.

Q. I am talking about it compared with an ordinary oil light. A. Yes.

Q. It was of the ordinary brilliancy of an ordinary oil light? A. I assume that, yes sir.

Q. Well, I want your opinion about it, you know, I want to know whether you think that was—

A. (Interrupting) It would be a matter of conjecture.

Q. Well, it looked like it? A. Yes sir.

Q .The best conjecture you can give us then about it is that it was an ordinary oil light?

A. Ordinary—

Q. (Interrupting) Burning with ordinary brilliancy? A. With ordinary brilliancy, yes sir.

Q. Now, the lights that are usual on the shore and around in these houses are ordinary oil lights too, are they not, lamps that they use in these farm houses?

A. Oh, yes.

Q. Are ordinary oil lamps, are they not? A. Yes.

Q. And yet you see them a good many miles off, don't you? A. Yes sir.

Q. And I presume if you had had this lantern upon the side of a hill somewhere you could have seen it a good many miles off too, couldn't you? A. Possibly.

Q. And the same with the masthead light too, couldn't you? A. Possibly.

Q. You say you were not going to blow until you saw the green light of the vessel that was going out?

A. Yes sir.

Q. That was your intention? A. Yes sir.

Q. Not to blow until you saw the green light?

A. Until I saw the signal light.

Q. You did not intend to shift your helm, either, until you saw the green light, did you?

A. Well, I could not answer that question.

Q. Did you shift your helm before you saw the green light?

A. No, I did not, I held her on her course.

Q. Held her right there? A. Yes sir.

Q. Notwithstanding you had heard the whistles blown to you? A. Yes sir.

Q. And notwithstanding that you had seen the black object ahead of you? A. Yes sir.

Q. Approaching you? A. Yes sir.

Q. You held her right on your course too?

A. Yes sir.

Q. So that, knowing you were approaching a black object, you were going to run right into it; is that the idea? A. No.

Q. Unless you saw her green light?

A. No, I won't state that.

Q. Well, what do you state, as a navigating proposition, then, under those circumstances?

A. When it came to a point of where I considered I was in any danger, why, I should have stopped my vessel.

Q. Oh, you would have stopped your vessel.

A. Yes sir.

Q. How do you suppose the fellow on the other vessel was going to know what you were going to do under those circumstances?

MR. MERRITT: I object to this as incompetent, irrelevant and immaterial and not proper cross examination.

Q. (Mr. Hayden) As a navigator, I am asking you.

A. If we would approach to a point where I considered it unsafe and he would not have blowed any danger signals or any other signals, why, there would not have been any necessity of my letting him know what I was doing. Would he have blown danger signals and I would be in a position where I considered it was unsafe and I stopped my vessel, I should signify that by blowing three whistles so that he would know that I had my engine reversed full speed astern.

Q. So that you would have your vessel in a position of danger so that it would be necessary for the other fellow to blow danger signals to tell you you were in a position of danger? A. Not essentially that.

MR. MERRITT: I object to that—

Q. Is that what you said? A. No, I didn't.

MR. MERRITT: (Continuing) —as incompetent, irrelevant and immaterial and not proper cross examination.

Q. (Mr. Hayden) What did you mean? You said you would get into a position where he would have to blow danger signals to you before you would blow several whistles?

A. Would that time come when he would begin to blow whistles—or if I considered that it was getting unsafe for the vessel that I was in, by stopping her and backing her up, it would not be necessary for me to signify him as long as he did not consider he was in danger. If he would not consider he was in any danger, or, rather, that I was by approaching him, why, he would not be called upon to blow any whistles, would he?

Q. Wouldn't is be a very much safer proposition, as a navigating proposition, when you see a vessel approaching you, to blow two whistles, and especially when you saw her coming at you and she had blown two whistles, to put your helm over and give them plenty of room to go by?

A. You have lost position with the vessel when you make that statement. When he blew the two whistles, he was dead across our bows.

Q. You knew the way he was going, didn't you?

A. Well, no.

Q. You must have known he was going off, to swing off—

A. (Interrupting) That was demonstrated to me.

Q. What did it mean to your mind, that is what I am getting at?

A. Well, I could not tell that he was blowing the two whistles to me, because I didn't see any signal lights, consequently I would not know but what he would be blowing to—a vessel might have been approaching him from the other side, coming out from—

Q. (Interrupting) I suppose you took an opportunity to look around and see if that was the case, didn't you? A. I did, yes.

Q. You didn't see any other vessel, did you?

A. It may have been something on the other side of him. By him blowing two whistles, I could not tell from the position that he was in and the position we were in that he was blowing two whistles at me; and the captain came to the conclusion then—

Q. (Interrupting) When you saw—

MR. MERRITT: (Interrupting) Let him answer that question.

Q. (Mr. Hayden) When you saw—

MR. MERRITT: (Interrupting) I object and ask that the witness continue his answer.

MR. HAYDEN: I thought he had finished.

MR. MERRITT: Go ahead with your answer.

MR. HAYDEN: I object to what the captain said to you, you know; that is all hearsay.

MR. MERRITT: Go ahead.

MR. HAYDEN: I wish to put in that objection.

MR. MERRITT: Put in your objection and let the witness answer.

MR. HAYDEN: Go ahead.

A. Well, I said that I could not tell, the position that he was in, that he was blowing two whistles at me.

Q. (Mr. Hayden) All right. Then isn't it your duty, when you see a vessel approaching you so that she is nearly head-on to you, under the rules, to give her a signal? A. True enough.

Q. Why didn't you give her a signal?

A. But when she blew the two whistles she was

across our bow, we were not head-on. She ultimately changed our position so that we were head-on, but at that time I had answered them and had put my wheel astarboard—my helm astarboard and run clear. And so far as the dark object is concerned, I perhaps will be able to satisfy the question in your mind anyway: Ofttimes running on the Sound we have very dark shadows cast across the waters, and so much so when approaching the cities, there are very deep shadows, and ofttimes if there would not be a light, for instance on a scow, you could not tell a loaded scow—a scowload of gravel, for instance, crossing the harbor here or in Tacoma Harbor, if you don't have a light on it, and you don't deem yourself in danger because there is a dark object ahead of you.

Q. When you are navigating and there is a vessel that is at anchor, she does not have any side lights, does she? A. No sir.

Q. So that under those circumstances if you see that dark object ahead of you, you change your course, don't you, to miss it, if you are running at it, you change your course to miss it?

A. I would not know what to do if she would blow whistles if she was laying at anchor.

Q. You say you knew these whistles were ahead.

A. True enough.

Q. You would change your course to miss her?

A. Yes, when I got to a point where I thought it was necessary.

Q. So that under those circumstances you really would have changed your course if you had got to a point where you thought it was necessary, wouldn't you?

A. Yes sir.

Q. You would not have gone straight on your course— A. (Interrupting) Oh, no.

Q. (Continuing) —until both boats got in danger and commenced to think of blowing danger signals?

(No response.)

Q. You say "No," to that, don't you?

A. No, I would say no to that.

Q. So, as a matter of fact, until after you had blown your two whistles you didn't think you were in any

danger of a collision with this vessel on this night?

A. No sir.

(Witness excused.)

GEORGE N. SALISBURY, having been produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Merritt) You reside at Seattle, Washington? A. At Seattle, yes sir.

Q. And what is your position?

A. I am the official in charge of the local Weather Bureau Office.

Q. (Mr. Hayden) What?

A. In charge of the local Weather Bureau Office.

Q. (Mr. Merritt) And have been how long?

A. Why, I have been in charge here for nineteen years.

Q. You were in charge on December 12th, 1912?

A. Yes, I was.

Q. Have you the official records of the Weather Bureau Office at Seattle for that date?

A. Yes, I have the original records and observations.

Q. Will you refer to those records and tell what the direction of the wind was between six and seven o'clock p. m. on January 12th, 1912?

A. On January 12th, 1912, the record shows between five and six the wind was blowing from the southwest with a velocity of twenty-three miles per hour.

Q. And between six and seven what was it?

A. And between six and seven was blowing from the south with a mean velocity of twenty-six miles an hour.

Q. And what between seven and eight on the same date?

A. Between seven and eight, from the southwest, with a mean velocity of twenty-seven miles an hour, reaching a maximum of thirty-one in the southwest at 7:26 p. m.

Q. Take the maximum velocity recorded during

this period of from six to eight o'clock, based on five minute periods, what was the average rate?

A. It would be that one that I last read, the maximum velocity in those three hours would be thirty-one miles from the southwest, at 7:26. p. m.

CROSS EXAMINATION.

Q. (Mr. Hayden) I presume that the report of the velocity of the wind here is not an absolute criterion as to what the velocity of the wind might have been at any particular time between Robinsons Point and Dash Point?

MR. MERRITT: I object to the question as incompetent, irrelevant and immaterial and not proper cross examination.

MR. HAYDEN: I wish to object to all this testimony as irrelevant and immaterial, and move to strike out what the wind was at Seattle; and under that objection and subject to that objection and without waiving it, I am simply asking these questions of Mr. Salisbury.

A. No, I would not regard this as being an absolute indication that the wind was just the same on the Sound at that point as it is here at Seattle—not just the same in velocity or direction.

Q. Did the wind increase in Seattle after eight o'clock, or decrease?

A. There was a slight increase; between eight and nine it reached thirty-two miles an hour; between nine and ten, thirty-three miles.

Q. Now, Mr. Salisbury, will you tell me what the minimum velocity of the wind was between five and six?

A. Between five and six. No, I could not tell what the minimum velocity was. There is no record as to that. The average velocity for the hour, twenty-four miles—twenty-three miles, between five and six.

Q. You have no means of telling the minimum?

A. I have no means of telling what the minimum was, not—

Q. (Interrupting) Have you any means of telling how long the velocities that you have figured as averaging continued?

A. Those a v e r a g e velocities, that continued throughout the hour or through those three hours as

I have read them. That was the number of miles that the wind progressed during that time.

Q. But I mean can you tell whether there was a comparative minimum for say twenty minutes, and an intermediate for twenty minutes and a maximum for twenty minutes during that hour?

A. Well, I would say that the minimum was not very far below the average. I would say that it was not much further below the average, probably, than the maximum winds of thirty-one or thirty-two miles I have read were above the average.

Q. What would be the variation above and below the average, can you tell that.

A. Well, above the average four to seven miles, why, it would be below the average probably not very much more, or else we would not have those records as to the average. The one here from seven to eight, the wind is four miles above the average at the extreme, and the other maximum, between eight and nine, is seven miles above the average.

Q. No, for what length of time do you figure that four miles above the average? A. For the total hour.

Q. What proportion of the total hour?

A. Oh, the time that is above is just for a period of five minutes during which the wind continued at that velocity or those velocities of thirty-one and thirty-two miles, respectfully, in those two hours—five minute periods.

Q. Only five minutes, then, during the whole sixty minutes, when it was four miles above the average; is that it? A. Yes.

Q. Then how many minutes was it say three miles above the average? A. Well, that I could not state.

Q. You have no method of finding the minimum or anything—

A. Yes, there is a method of finding it. The minimum wind is recorded on the original sheets where the automatic record was made; that is at the central office in Washington, it is not preserved at this station. This is the record that is preserved at the station, called the Daily Local Record.

Q. Your instrument here is situated pretty high above the land, is it not, it is on top of the—

A. (Interrupting) Yes, at that time it was in the same location that it is now, on top of the Hoge Building and at an elevation of 250 feet above the ground.

Q. And the velocity of the wind there would probably be more, would it not, than it would down toward the surface of the water, 40 or 50 or 60 feet above the surface of the water?

A. I would not regard it that way; I should regard it as being more than it is at the surface of the ground underneath, or over the level of the city here, but not much, as my experience and observation would show, above the open wind on the Sound.

REDIRECT EXAMINATION.

Q. (Mr. Merritt) I don't know whether you gave the maximum velocity between six and seven and seven and eight. Did you give that?

A. Between seven and eight the maximum velocity was thirty-one miles, southwest.

Q. And how much was that above the—

A. (Interrupting) That was the one that was four miles.

Q. That was the one that was four? A. Yes.

Q. And now, as I understand you to say, in your opinion it would not fall more than four miles below the average during that time?

A. Hardly more than that, or they could not get that average very well.

RECROSS EXAMINATION.

Q. (Mr. Hayden) Of course the average would depend on the length of time, would it not— A. Yes.

Q. (Continuing) —that the minimum prevailed—

A. Yes.

Q. (Continuing) —and the length of time that the maximum prevailed?

A. Yes; and the argument is the more strong because this maximum prevailed but for five minutes, showing that there was not a very great time that it was above this average.

REDIRECT EXAMINATION.

Q. (Mr. Merritt) You mean that would be more

strong that it did not fall below four miles below the average?

A. That is the way it appears to me. I may be a little confused on it, but that is the way it appears to me. If at any time it had gone very far below average, that tends to bring up the average for the whole hour; the greater the velocity for five minutes the greater the average for the full hour; if that was not very far above the velocity, and only for the short time that it was so much above the average, then it would stand to reason that there could be no very long period when it was far below the average.

(Witness excused.)

R. E. CAPERS, having been produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Merritt) Your name is R. E. Capers?

A. Yes sir.

Q. You are a practicing attorney in Seattle?

A. Yes sir.

Q. (Mr. Hayden) And associated with the firm of Bogle, Graves, Merritt & Bogle?

A. Yes sir, I am connected with the attorneys for the respondent and claimant.

Q. (Mr. Merritt) And were on December 4th of this year? A. Yes sir.

Q. Do you know the steamer "Strathalbyn"?

A. Yes sir.

Q. Were you on her on December 4th, 1913?

A. Yes sir.

Q. Whereabouts? A. Did you say whereabouts?

Q. Yes.

A. I was on the fore part of the vessel on December 4th, on the lower bridge, and different parts of the vessel, all over the fore part of the upper deck.

Q. Where was the vessel at that time?

A. She was loading lumber at Port Blakely.

Q. That is on Puget Sound opposite Seattle?

A. On Puget Sound, across the Bay from Seattle.

Q. Did you at that time have any photographs taken of any part of the vessel?

A. Yes sir, photographer Nowell and I went over and took photographs of certain portions of the vessel and from certain portions of the vessel.

Q. Showing you seven photographs, marked by the stenographer, respectively, Capers' exhibit "A", Capers' exhibit "B", Capers' exhibit "C", Capers' exhibit "D", Capers' exhibit "E", Capers' exhibit "F" and Capers' exhibit "G", I will ask you if those are the photographs which you had taken of the "Strathalbyn" or portions of the "Strathalbyn" at the time and place you have mentioned? A. Yes sir, they are.

Q. Now, refer to exhibit marked by the stenographer Capers' exhibit "A" and state fully where the camera by which this photograph was taken was placed in taking this photograph?

MR. HAYDEN: I want to just ask the witness a question or two.

Q. (Mr. Hayden) Did you develop these photographs?

A. I did not personally. I was present when the developing was in progress, however.

Q. (Mr. Hayden) During the whole of the development? A. No sir.

Q. (Mr. Hayden) Only a part of it. Were you present when the photographs were printed?

A. No sir.

MR. HAYDEN: I think the best witness in connection with these photographs would be the witness who developed these, did the development work, and who made the printing of them—unless it is merely illustrative of something.

THE WITNESS: I will make a statement in reference to that—

Q. (Mr. Merritt, interrupting) I will ask you whether or not these are correct photographs of portions of the "Strathalbyn" at the time and place you have mentioned?

MR. HAYDEN: I object to that as the witness is unable to state that they are correct.

Q. (Mr. Merritt) Proceed.

A. They are exact photographs.

Q. Did you see the plates afterwards?

A. Yes sir, I saw the plates down in the photographer's office.

Q. Do you know whether these are prints from the plates that were taken at that time?

A. They are absolute reproductions of the plates. Furthermore, I will make this statement in reference to the identification of the photographs, that as fast as the photographs were taken, I had them marked on the back by the photographer, in a given order, and identified them in that way; the same number appeared on the back of the photograph—no, on the front of the photograph, so that in that way they are identified.

Q. Are the numbers which appear on the front of these photographs, to-wit, "3008" to "3014", inclusive, the numbers which you now refer to?

A. No, I refer to—let me see now—"9" and "10", you can see that down in the lower corner.

MR. HAYDEN: You don't object to my looking at those photographs a minute, do you?

THE WITNESS: Not a bit.

MR. MERRITT: No.

(Witness hands photographs to Mr. Hayden.)

MR. HAYDEN: I further object to any testimony on these photographs, on the ground that it is not shown by the evidence that these photographs illustrate in any way the condition that existed on the steamer on the day in question, having been taken at some subsequent voyage and at a subsequent time of course to the time of the accident, and don't show the condition that existed at the time of the accident.

A. Shall I proceed?

Q. (Mr. Merritt) Now you may proceed and take the photograph marked "Capers' exhibit A" and tell just where the camera stood and the lens of the camera was when this photgoraph was taken, and what portion of the vessel, if any, is included in this picture; describe fully?

MR. HAYDEN: Which one are you describing now, "A"?

A. The first four photographs, namely, Capers'

exhibits "A" to "D", both inclusive, were taken from the port lower box light of the steamer "Strathalbyn", and in taking these photographs I placed the camera with reference to two given positions.

The first position, which I will refer to as first position, was arrived at by measuring out from the inside wall of the port box light a distance of one and one-eighth inches plus one thirty-second of an inch plus three and one-fourth inches.

In taking exhibit "A", I attempted to place the camera in such a position that it would occupy just the place that would be occupied by the light, and also so that the inside edge of the lens of the camera would be flush with the point I have named as first position. However, the camera was found to be a little bit too wide to allow the lens of the camera to be exactly at first position, so exhibit "A" was taken from a position one-sixth of an inch further out from the inside wall of the box light than first position.

Q. (Mr. Merritt) When you speak of the light, are you referring to the flame of the light or the quality of the light?

MR. HAYDEN: I object to that. There was no light there.

A. I am simply going, Mr. Merritt, by the distances that were given me. I didn't see the measurements taken by which first position was arrived at.

Q. (Mr. Merritt) In other words, as I understand the lens at that time was one-sixth of an inch further out than the measurements that you have given?

A. Yes sir.

Q. Now, go ahead and state what portion, if any, of the vessel that exhibit "A" shows?

A. The camera there looks out over the forward portion of the vessel from the port box light, and in the foreground is standing myself; behind me is one of the longshoremen who was aiding in loading the vessel, and behind him is still another man who cannot be seen except the edge of his hat.

Q. What is the timber behind which you are standing?

A. The timber behind which I am standing, in ex-

hibit "A", is the first stanchion from the port box light, looking forward over the bow of the ship. The man next behind me is standing behind the second stanchion.

Q. Which direction was the camera pointed?

A. Towards the bow of the vessel.

Q. Was it pointed straight or at an angle?

A. It was pointed perfectly straight, that is, the camera was arranged perfectly even with the inside wall of the box light.

Q. Is that true of these four photographs, the exhibits that you have referred to?

A. It is true in each one of the four that I have mentioned as being taken from the box light itself.

Q. Explain what portion of the vessel is shown in exhibit "B"?

A. Exhibit "B" was taken from the same position that I have just described above with reference to exhibit "A", except what the inside lens of the camera was one-third of an inch further out than first position.

Q. Now, in this first position—so that we won't make any mistake—that first position, if I understood, included these first three measurements, or did it include this one-sixth of an inch additional?

A. The first position I referred to is the point which would be arrived at by adding together the distances that I gave above.

Q. The three distances?

A. The three distances; so that the one-sixth of an inch and the one-third of an inch are still additional to first position.

Q. Now, in taking—

Q. (Mr. Hayden, interrupting) Are you adding the one-sixth and one-third together for the second position? A. No sir.

MR. MERRITT: That is what I wanted to know.

Q. (Mr. Hayden) One-third is only plus—is in addition to the one and an eighth plus one thirty-second plus three and a quarter? A. Yes sir.

Q. (Mr. Merritt) Just so that there will be no mistake about it, give the distance out of the camera or the lens of the camera in taking exhibit "B"?

A. Exhibit "B" was taken with the inside edge of

the camera's lens the following distances from the inside edge of the box like wall—

Q. That is still on the port box light?

A. The port—the same box. (Continuing) —one and one-eighth inches plus one thirty-second of an inch plus three and one-fourth inches plus one-third of an inch. That is exhibit "B".

Q. Go ahead and explain what portion of the vessel is shown in exhibit "B", and where, what the different objects shown in that photograph are?

A. Exhibit "B" is taken with the camera placed in identically the same position as in exhibit "A", arranged in identically the same position, looking in exactly the same way, wth the exception that the lens was one-sixth of an inch further out that it was in exhibit "A". It shows, therefore, the fore part of the vessel, except as shut off by a portion of the box light, and in the foreground I am standing behind the first stanchion. The man behind me is one of the stevedores or ship employes, I don't know which, who is standing behind the second stanchion.

Q. What were you standing on in these photographs?

A. I was standing on the top of the deckload of lumber. So were the other men shown in the photographs.

Q. Now, take exhibit "C"?

A. Exhibit "C" was taken by placing the camera with reference to what we will call the second position. The second position was arrived at by adding to the point named above as first position, the distance of one and thirteen-sixteenth of an inch. In exhibit "C" the outside edge of the camera's lens was placed flush with this point named as second position. The camera was arranged in the light box in the same manner as in the former photographs, exhibits "A" and "B", looking out over the bow of the vessel, showing the line of stanchions on the port side of the vessel, there being no one in the foreground to obstruct the view.

Q. Exhibit "D"?

A. Exhibit "D" was likewise taken from the same position that exhibit "C" was taken, that is, the outside

edge of the camera's lens being flush with second position. The only object is myself standing behind the second stanchion; I am standing on the deck load—the only difference between exhibits "C" and "D".

Q. Is the fact that you are in the foreground?

A. That I am in the photograph in "D".

Q. Now take exhibit "E" and state?

A. Exhibit "E" was taken by placing the camera in this position: We located the camera on the top of the second stanchion, that is to say the stanchion second from the edge of the bridge on which the port box light sits.

Q. Which box light, the upper or lower?

A. The lower.

Q. On the same side, the port side?

A. On the same side, the camera looking to the rear or the stern of the vessel. I am standing behind the port box light on the lower bridge.

Q. How was the camera pointed with reference to the side of the box light—the inside of the box light?

A. Well, it was even, that is, as even as we could get it judging—going by the stanchions; we placed the camera with the inside edge of the camera—not the lens—even with the inside edge of the second stanchion, so that this would throw the lens itself in just the center of the stanchion.

Q. And that photograph shows what?

A. That photograph shows the first stanchion out from the bridge, in the foreground, with a rope around it.

Q. And shows what box light?

A. I am standing behind the lower bridge port box light.

Q. Now take "F"?

A. "F" was taken by placing the camera in the same way that it was placed on the second stanchion, except that it was placed in exhibit "F" on the top of the first stanchion. The object in the foreground is the port box light, lower bridge, about which we have been talking.

Q. Where and how on this stanchion was the camera placed?

A. In the same way that it was placed on the second stanchion, that is, the lens of the camera was in the

center of the post, the stanchions being I believe 10-inch stanchions.

Q. And how was it pointed with reference to the box light or the light box?

A. It was pointed straight back. We made no effort to point it directly at the box; it was,—as you can see there from the edge of the bridge and the vessel, it was looking directly back to the stern of the vessel.

Q. Now take exhibit "G"?

A. Exhibit "G" was taken from the top of a shed. The vessel was warped up to the wharf there, with her port side to the wharf. If you will turn back to exhibit "C", you will see a lumber shed which appears off to the left there and down on the wharf itself. It has lumber stacked under the top, and a sloping roof. That was the only object on which we could get to take a snap of the port box light from the front of the vessel.

Q. How was the camera pointed?

A. The camera was pointed in such a way that it would take in the name "Strathalbyn" and as much of the ship as possible, including the lower bridge port box light.

Q. Whereabouts with reference to the port lower bridge box light was the camera or the lens of the camera pointed in this exhibit "G"?

A. It was not pointed directly at the box light itself, the camera being turned a little bit more to the left in the picture. You can see from the picture itself that the camera was looking just about directly at the foremast—I suppose you call it the foremast—of the vessel, so that the name "Strathalbyn" and the whole fore part of the vessel is shown in the picture. That would make no difference whatever, however, as to the line of vision with reference to any object shown in the picture.

Q. This exhibit "G" shows what portion, then, of the vessel at that time?

A. It shows the port bow of the vessel, in fact it shows the whole port side clear back to the stern; it shows the line of stanchions on the port side, supporting the deckload of lumber; it shows the lower port box light; just above and partially inside of the first stan-

chion it shows the entire upper bridge, and it shows the men there engaged in loading lumber.

Q. Was the vessel completely loaded at this time?

A. No sir.

Q. I think that covers each of the exhibits.

A. That is all the exhibits.

MR. HAYDEN: Of course my objection it is understood goes to each of these exhibits.

CROSS EXAMINATION.

Q. (Mr. Hayden) Did you take any other photographs than these? A. No sir.

Q. No further photographs were taken by Mr. Nowell than these? A. No sir, they were all we took.

MR. MERRITT: By the way, I offer now in evidence exhibits marked "Capers' exhibit A", "Capers' Exhibit "B", "Capers' Exhibit C", "Capers' Exhibit D", "Capers' Exhibit E", "Capers' Exhibit F" and "Capers' Exhibit G".

MR. HAYDEN: To all of which we object on the ground that there is no testimony showing that the condition depicted in these photographs is the condition that existed at the time of this accident in question here; and on the further ground that from the other evidence in this case, that has been introduced by the respondent, the photographs are shown to be absolutely dissimilar from that which was shown by the evidence heretofore taken; and move to strike out all the evidence in the case in connection with these; and cross examination is subject to that motion and without waiving it.

Photographs above offered in evidence are hereto attached and returned herewith, same being marked, respectively, "Capers' Exhibits "A" to "G", both inclusive.

Q. (Mr. Hayden) Mr. Capers, how far forward of the forward end of the bridge was the first stanchion shown in these pictures?

A. It was just about five feet forward, that is, the edge of the stanchion itself was substantially, a few inches either way, five feet from the outside edge of the lower bridge—that is, the forward edge of the lower bridge. I measured it, but I don't exactly recall now. It was either five or five and a half feet. Oh, no, I can give it to you exactly. (Witness referring to paper.)

I find my memorandum here. The first stanchion was four feet ten inches from the outer edge of the bridge.

Q. (Mr. Merritt) You say the outer edge; you mean the forward edge?

A. The forward edge, yes sir.

Q. (Mr. Hayden) What was the height of the stanchions?

A. I didn't measure the stanchions.

Q. What was the length of the stanchions?

A. About 16 feet.

Q. Was the camera on a level when these pictures were taken? A. Yes sir.

Q. And the stanchions were substantially the same length all along the side of the vessel, were they?

A. Not exactly, but substantially. You can observe, from exhibit "C", pretty well the relative height of the different stanchions. The second stanchion, for instance, is six inches lower than the first. There are one or two further out that are higher than the first—probably six to eight inches higher.

Q. The second stanchion was lower than the first stanchion? A. Yes sir.

Q. Six inches? A. Just about six inches.

Q. How far was the second stanchion from the first stanchion?

A. I think it was about—let me see—I didn't measure it—I should say four or five or six feet.

Q. You did not measure it?

A. I did not measure it exactly, no sir.

Q. The third stanchion forward was how much higher than the first stanchion?

A. I didn't measure it.

Q. And the fourth forward was how much higher than the first? A. I didn't measure that.

Q. And the fifth?

A. I didn't measure any of them outside of the—

Q. (Interrupting) Well, your idea of it?

A. Well, I guessed it a while ago, as near as I could; I should say that the stanchions are—

Q. (Interrupting) Substantially—

A. (Continuing) —are substantially all sixteen

foot stanchions, but that as shown here one or two are lower than the rest of them.

Q. I see.

A. They are not absolutely even, in other words, all the way along.

Q. Did you notice the lights in the forward part of the house? A. The what?

Q. The lights, the light-holes, the port-holes in the forward part of the house? A. No sir.

Q. The glass port-holes in the forward part of the house? A. No sir.

Q. Where the lights go into the cabin underneath this deck on which the port light screen is located?

A. No sir.

Q. How much below the deck was this cargo of lumber?

A. By examining exhibit "E" you can get a fair idea of it. I should say that the top of the deckload of lumber at that time was about five feet from the top of the first stanchion. The first stanchion, as you observe, extends above the floor of the bridge—the lower bridge—so that I should say the top of the load of lumber is in the neighborhood of four and a half feet.

Q. Yes, but the lumber was higher in the center, was it not, than it was on the side? A. No sir.

Q. Look at this left hand—

A. That is not lumber, that is a part of the ship, that is a part of the ship; you see this down here, that is a part of the ship itself.

Q. The lumber then went under the bridge, did it?

A. No sir, it didn't go under the bridge. The ship is built in there—I don't know what you call it—but a part of the cabins. You can get an idea from looking at these—

Q. (Interrupting) You say this left hand corner of exhibit "E" is a part of the house?

A. Yes sir; and if you will look at exhibit "G" you can see that that is the case—the white portion there under the bridge being a part of the ship's body or a part of the cabins themselves. The fact is the captain's cabin is in there.

Q. But the front of the house is all flush with the

forward— A. (Interrupting) Edge of the bridge.

Q. (Continuing) —edge of the bridge?

A. That is true, yes sir.

Q. So that there is an optical delusion there in that picture when you show the side of the house to appear to be forward of the forward edge of the bridge?

A. No, I don't say so.

Q. You don't think it does appear to be forward of the forward edge of the bridge? A. No sir.

Q. It looks so to my eyes. And it looks to my eyes as if the lumber was further aft than this side of the house, referring now to exhibit "E".

A. You see there, Mr. Hayden, where I am standing in this exhibit "E" behind the light box, the bridge extends out from the portion of the cabin or ship to which it was attached. It may be that a few—that the ends of the deck load of lumber here extended in a little bit, I would not say as to that, but I think it is substantially flush with the front side of this part of the ship under the bridge.

Q. How far is this boat davit, shown immediately aft of the aft end of the light screen in exhibit "F", from the aft end of the light screen? A. This?

Q. Yes. A. My dear sir, I didn't measure that.

Q. It is very close, isn't it? A. I—

Q. (Interrupting) You remember you had some difficulty in getting your camera placed in there, because of it?

A. It is pretty close, yes; I should say probably three feet.

Q. Oh, no, it is closer than that.

A. I don't remember. I don't think it is. It may be—

Q. (Interrupting) You had difficulty in getting the camera in there, you could not stand in between the davit and the light screen and stoop down so that you could put your camera there, could you? A. We did it.

Q. Well, but you—

A. (Interrupting) We got in there all right.

Q. You were standing in there yourself, but your shoulders were back of this davit when you fixed your camera in there, were they not?

A. You say my shoulders—you ask if my shoulders were against this davit?

Q. Your shoulders were back of it, your head was in front of it?

A. Oh, no. Referring to exhibit "E", Mr. Hayden, I am standing between the box light and the davit you are speaking about, and I haven't the slightest difficulty in the world in standing there with entire comfort.

Q. Yes, I see that you are, but that does not answer the question. There is room for a man to stand in a place of that kind, where there would not be room for a man to stoop and get down so that he could look over the box, isn't there?

A. I should think that would depend very largely on the build of the man.

Q. Yourself, of your build?

A. It would not interfere with me at all.

Q. Can you stoop down and take as little space as you can when you are standing up? A. Why, no.

Q. That is what I am talking about. So I say when you were trying to place that camera on the edge of the box there was not room for you to get down so that your eyes would be on a level with the camera and be in front of that davit?

A. It would not be possible to place your eyes on a level with that camera by any position at all with the camera in the box, it could not be done.

Q. You put your camera right in that box, did you? A. Yes.

Q. Down at the bottom of the box?

A. Down on the floor of the box.

Q. Down on the floor of the box? A. Surely.

Q. Not on top of the box?

A. Oh, no, it was resting—

Q. (Interrupting) Right on the floor of the box.

A. Resting on the floor of the box.

Q. How high was the lens above the floor of the box?

A. The camera was one of these cameras—I presume about ten inches square, one of these extension cameras. Folded up it was some three—two and a half or three inches wide, and extended out of course; you

get your focus by extending it back and forth, but I should say that the camera is about ten inches or perhaps twelve inches wide at the back.

Q. Wide at the back? A. Yes sir.

Q. How high is it at the back, about the width—

A. (Interrupting) Square, just about square; I think it is about square.

Q. About the width of these pictures, isn't it?

A. Well, I don't know—

Q. (Interrupting) There is very little room, very little of the camera either above or below the edge of the pictures, isn't there? Is this a film camera or is it a plate camera? A. Put in a plate at the back.

Q. A plate camera? A. Yes.

Q. You know, then, that the plate occupies practically the whole of the back of the camera, doesn't it?

A. Not altogether, no. It occupies a substantial portion, almost all of it, but not all; the camera is larger than that picture—the back of it.

Q. Probably a half an inch, isn't it?

A. No, the camera is larger than that, I think, Mr. Hayden. I am quite sure that the camera was ten by ten easily.

Q. I presume we would have no difficulty finding out exactly about that, would we? A. Oh, no.

Q. We might go down and see that camera, to get this into the record, and then put it into the record after we have seen it.

MR. MERRITT: Yes.

MR. HAYDEN: I will leave it with Mr. Richards and you to put in that distance. I want to get how high the lens of the camera is above or how high it was above the bottom of the box when you placed the camera in the bottom of the box.

THE WITNESS: Yes. All right, I will put that in. Let me say now, in order to complete the record, that when I shall have had an opportunity to examine and measure this camera, I will insert, as a part of my testimony, the measurements you desire.

MR. HAYDEN: You don't need to put that in there.

MR. MERRITT: Just say the camera was so large

and the lower edge of the lens was whatever it is.

MR. HAYDEN: Inches.

MR. MERRITT: Inches above the bottom of the camera.

MR. HAYDEN: Yes, and of course the camera sets on the box and would be above the bottom—

MR. MERRITT: (Interrupting) And he can get that measurement, whatever it is, and put it in there.

MR. HAYDEN: Mr. Richards can check it up, and I will take Mr. Richards and you. You know the camera, of course? A. Yes.

Q. (Mr. Hayden) It was one of the ordinary Eastman folding kodaks, wasn't it?

A. No, I can't say, Mr. Hayden; I didn't take the camera over. It belongs to Mr. Nowell and he took it from the stock.

Q. Why do you say these were 16-foot stanchions?

A. I simply judge that.

Q. Referring now to this exhibit "C", I want to ask you if you know what object that is to which the arrow points, at the top of the arrow being a mark "X" —what is that? A. That is a portion of the box light—

Q. (Interrupting) No, no, this up here.

A. Oh, yes, I beg your pardon.

Q. This object that that arrow points to?

A. (After examining) That is some portion of the vessel, some sort of a pole, but whether it is a davit or what I can't tell from that. It is shown in two or three of the others. Let's see if I can tell from this one. (Examining) I don't know.

Q. But you do know it is a portion of the vessel?

A. Yes.

Q. Referring to your exhibit "F", what is that object to which the arrow points in the light box?

A. That is the iron hook attached to the inside wall of the light box, on which the port box light is placed when in the box.

Q. Did you notice any hole through the box in the vicinity of that iron hook?

A. I don't recall noticing any now, Mr. Hayden. If I am not mistaken, there was a hole in the box, but

just whereabouts I don't now recall. I think it was in the bottom.

Q. I suggest to you, wasn't it right behind that iron bracket so that you screw on the lamp?

A. Possibly was.

Q. Is that your recollection of it now?

A. I think it was just about there.

Q. The object being so that you could screw the lamp on through there?

A. Very likely, yes sir. I didn't notice all those incidental details. I didn't have time to take an entire survey of the vessel.

Q. You did not take any picture from directly ahead of this vessel—

A. (Interrupting) There was no place—

Q. (Continuing) —from the bow?

A. There was no place to place the camera.

Q. Well, while you were aboard this vessel did you observe whether or not you could see that light-screen from a point directly ahead of the vessel on her deck or the deck load of lumber?

A. Do you mean by that the—what do you mean by light-screen, is that the lamp itself?

Q. This is the light-screen we have been referring to here, this box, as you call it; you could see that, couldn't you, from the deck of the vessel?

A. Why, I did not—there was no space to stand except along this deckload of lumber there, and as none of these stanchions extend above the box light, that is, higher than my head, why, of course if I stood on the edge of the vessel here and looked over the stanchions I could see it.

Q. Now, standing alongside of the stanchions on the inside and on the deckload and looking along aft, could you see that box light? A. I didn't try it—

Q. (Interrupting) What is your opinion about it now? You were over there?

A. I think if I placed myself behind one of those—any one of those stanchions and looked over it, I could possibly see it.

Q. Well, if you were on the deck load toward the center of the ship, but right up against those stanchions,

and looked aft, you could have seen the light also, couldn't you?

A. I could not say either way; I don't know; I did not try it.

Q. Well, were those stanchions inside or outside of the line of the light, looking forward, as you saw them?

A. That is shown by the photographs much better than I could say.

Q. Just answer me. Never mind the photographs.

A. They were outside.

Q. If you were standing inside looking aft, there is not any question but what you could see the light, is there? A. Quite probably.

Q. I want to know whether in your mind there is any question about it?

A. Well, without having tried it, it would be pure guess work. I think possibly you could.

Q. That is your impression?

A. That is my impression.

Q. Your best understanding?

A. It is quite possible.

Q. There is not any doubt of that in your own mind, is there?

A. There are several reasonable doubts, as I have explained in previous questions, that without having absolutely made the test I will not be positive either way.

Q. So you will not be positive that you could see that light screen when you saw that light-screen from a position alongside of the forward stanchions on this deckload of lumber, when you testify all the stanchions are on the outside of that light-screen?

A. I will not be positive, Mr. Hayden.

Q. I want to ask you, now, if you will refer to your exhibit "C" and to this object that I have marked with an "X", and I will ask you if you were standing alongside of this stanchion which I have marked here "A", if you could not have seen the light-screen, the whole of it?

A. Basing my opinion on the picture and the arrangement that you have made with the marks on the exhibit, I should think I could, provided I placed my face or eyes in the exact place occupied by the pole there and marked "X".

Q. I want you to take exhibit "G" and draw a mark on it from the light-screen, as it appears in that exhibit, without obliterating or of course marring the screen itself?

A. I will indicate it with an "X". (Marking)

Q. Just draw a line, an arrow point to it, if you can. Don't put it on the light-screen itself, but just come to the light-screen.

A. (Witness marks) I have drawn a pencil mark on the face of the exhibit "G", indicating the light-screen, and have marked the pencil mark with an "X".

Q. Now, will you draw a circle around the light-screen so as to make it more definite?

A. Sure. (Marking) I have drawn in pencil, upon the face of the exhibit, a round circle around the box.

Q. This apparently square object above the end of the stanchion is the light box?

A. Yes sir, that is correct.

Q. Now, was this house that is shown in exhibit "C" higher or lower than the deckload of lumber at the time this photograph was taken?

A. It was a little bit lower than the deckload of lumber.

Q. A little lower? A. Yes sir.

Q. Whereabouts on that house did you stand when you took the picture "G"?

A. We stood with the camera placed rather close to the end of the shed which would be next to the vessel; that is to say, the camera was not identically on the edge, but it was some three or four feet back from the end of the shed. The camera was just about where the outside edge of the first stanchion strikes the top of the shed in exhibit "C"; just about there.

Q. Was the camera resting on the shed?

A. It was on a pole, or it was on one of these tripods—what do you call them?

Q. Tripods? A. Tripods.

Q. And how high was that tripod?

A. Oh, the tripod I should say stood up five feet.

Q. Higher than your head?

A. No, no, from the top of the shed.

Q. Well, would it be five feet higher than your head?

A. No, no, I should say just about on a level with my head; just about. They can extend or lower those tripods, at pleasure, and as I did not arrange it I can't say exactly the height.

Q. How tall a man are you?

A. Five feet six and a half. Mr. Nowell, who took the photograph—all the photographs, is just about my height, possibly an inche or two taller.

Q. So that you would have to stand up practically straight, then, to see into and through the camera with the tripod the way you had it? A. Yes sir.

Q. In this exhibit "C", the first stanchion apparently is a very considerable distance to the left of the block in the forward end of the screen? A. Yes sir.

Q. Can you tell me how far the inside edge of the first stanchion would be from a line pojected forward of the light-screen and parallel with the block in the forward end of the light-screen?

A. You want that from direct information, or measurements, or judging from that picture?

Q. If you have it in measurements, I want measurements.

A. I have not measurements. I would have to base it on that picture.

Q. Well, base it on your recollection.

A. I would say that the inside edge of the first stanchion was substantially ten to twelve inches further out than would be a line projected in the manner that you have stated.

Q. Now, were the row of stanchions substantially on a line with each other—the tops of them?

A. Do you mean as to height or as to portions inside or out?

Q. Inside or out—portions inside or out.

A. They varied a little.

Q. Not very much?

A. Not very much, no sir.

Q. Now, I want to call your attentian to exhibit "E", and, after looking at that exhibit, I would like you to tell me how much you consider the inside of the

stanchion would extend outside of a line projected forward of the forward end of the block—from the block in the forward end of the light-screen.

A. Basing the answer upon my knowledge of the manner in which the photograph was taken, that is, with the camera about even with the middle of the second stanchion, I see no occasion to vary the first opinion, that is, from ten to twelve inches outside of a line projected forward from the screen. I think that is about correct.

Q. What was the size of these stanchions?

A. I judge them to have been 8 by 8s or 10 by 10s.

Q. They were square, were they?

A. Yes, they were square. More probably 10 by 10s.

Q. If these photographs "A", "B", "C" and "D"—well, as I understand you, the stanchions were as a matter of fact lower than the light-screen?

A. Yes sir.

Q. The bottom of the light-screen?

A. The second stanchion I should think would be lower than the floor of the light-screen or bottom of the light-screen.

Q. Now then the first stanchion was six inches higher than the second stanchion?

A. Just about five or six inches higher, yes sir.

Q. And in photography the object that is nearest to you, if a picture is taken to show a perpendicular situation, and the camera is placed below the object, as between you and another object, it will raise the apparent height of the object that is between, will it not?

A. Well, yes, a camera—photography differs in no way in that respect from any other perspective.

Q. So that in exhibit "E", this object from which I have drawn a arrow is the first stanchion—

A. (Interrupting) Yes sir.

Q. (Continuing) —forward of the bridge?

A. Yes sir.

Q. And that stanchion was six inches higher than the second stanchion?

A. Just about, yes sir.

Q. And your camera was resting on the second stanchion? A. Yes sir.

Q. And your camera was about six feet forward of this first stanchion?

A. Five or six feet, somewhere in the neighborhood.

Q. And the light-screen was four feet and a half aft of the first stanchion?

A. No, the light-screen was more than that. The edge of the front of the bridge was four feet ten inches from the back side of the first stanchion.

Q. Oh, yes.

A. The box, as you observe, is still further aft.

Q. Yes, that is what you testified to, I made a mistake there, so that the box is still further aft?

A. Yes sir.

Q. In this exhibit "E", considering the location of the camera when it was taken, the apparent height of that stanchion is not correctly shown, is it?

A. Yes, I think it is, with reference to the light-screen, for this reason: The lens of the camera resting upon the second stanchion would necessarily be higher than the top of the stanchion, and at the time we took that photograph I observed that the lens of the camera was substantially on a level with the top of the first stanchion. As you observe there from an inspection of exhibit "E", the top of the first stanchion is just about flush with the bottom of the light screen. If the camera were looking down upon it, of course you would see a portion of the top.

Q. Which you don't see, any portion of the top of it?

A. You don't see any portion of the top.

Q. So that camera is a little below it?

A. No, not necessarily. I think it is just about flush with it. In fact I judge it to be just substantially —just about even with the top of it. Wouldn't you say so, from an inspection of the photograph?

Q. It looks to me as though it were about even with the top of it, as near as I can tell.

A. Yes, I think it was.

MR. MERRITT: It looks to me as though it was

a little bit above it, looking down on top of that stanchion; below, lower than it really is.

A. In exhibit "E" it is clear to observe that the camera is looking down on the floor of the light-screen itself, slightly; and measuring now the first stanchion as shown in exhibit "E" with the floor of the box light, I would say the top of the first stanchion is an inch or two or three above the bottom of the box light.

Q. Then the apparent height of the stanchion in your exhibits "A", "B", "C" and "D", is very much exaggerated, is it not? A. The what?

Q. The apparent height of the stanchion is very much exaggerated in those pictures?

A. I don't think so.

Q. Above the bottom of the box?

A. Oh, I can't say that it is exaggerated. It is just exactly like it would look if you had your eye there. There is no other way to take a photograph from that position.

Q. Doesn't that look to you to be considerable more than a couple of inches above the bottom of that light screen? A. No.

Q. It does not? A. No.

Q. All right, that is all I want to get at. Referring to your exhibits "A", "B", "C" and "D", this dark object prominently in the foreground, with a black spot and another round circle in about the center of it, is the block in the forward end of the light-screen, is it not?

A. Yes sir.

Q. Would you mind writing across there "block"?

A. In each one of them?

Q. Yes. Just write it right on the thing itself, in good big letters so that we will understand just what it is.

A. (After writing with pencil) I know whether this is going to show or not.

Q. It will show. If you had a pen and ink here you could write it better.

A. (Witness writes the word "Block" with pen and ink on the exhibits referred to.)

Q. I wish you would take your exhibits "E" and "F" and write on each of those exhibits the block in

the forward part of the light-screen, corresponding with the block that you have just designated in exhibits "A", "B", "C" and "D".

A. All right. (Witness writing "Block" with pen and ink on exhibits "E" and "F" referred to.)

Q. You were not on the "Strathalbyn" at any time previous to the time you took these pictures, were you?

A. Yes sir.

Q. You were not on the "Strathalbyn" when her deck cargo was on that was on her at the time of the accident, were you? A. No sir.

REDIRECT EXAMINATION.

Q. (Mr. Merritt) Do you remember whether or not there was any small vessel lying forward and on the port bow of the "Strathalbyn" at the time these pictures were taken?

A. A small vessel lying off the port bow?

Q. Yes.

A. I don't recall now, Mr. Merritt, but I am under the impression there was none.

Q. You don't remember whether there was or not?

A. I don't remember, no sir.

Q. Referring to the object which has been marked by an arrow on exhibit "C", I will ask you to look at exhibit "G" and see if you can see any similar pole or object on the forward part of the vessel there, whether you can see anything answering to that object on the forward part of the vessel, on exhibit "G"?

A. What I take to be the corresponding object on exhibit "G" is an iron post or stanchion, being the first, and a series of similar posts running from the last of the stanchions around the curve of the vessel's bow, through which an iron cable is run through the top. I will mark it, if you wish, on exhibit "G"—

Q. (Interrupting) No, I don't care anything about marking it. A. To identify it—

Q. Of course that is simply what you —

A. (Interrupting) I assume that it is the same object.

Q. You don't know whether it is or not?

A. I don't know absolutely.

Q. It may have been something off the vessel that appeared there in the picture?

A. It is possible, but I hardly think so.

Q. You speak about that iron cable or iron stanchion on the forward part of the vessel, through which this cable is run. Can you see, in exhibit "C", the second of those iron stanchions as shown in exhibit "G"?

A. No sir.

Q. You did not undertake at this time to see just what could be seen from those various positions, did you?

A. No, sir; I had not time to take all these different measurements that have been inquired about here.

Q. Could you have seen what appear in the photograph if your eyes had been placed in the same position as the lens of the camera?

A. Certainly, undoubtedly.

Q. And whatever then is shown in the photograph you could have seen if you had been in the same position?

A. Yes sir.

Q. And nothing less and nothing more?

A. That is my opinion.

(Witness excused.)

MR. HAYDEN: I cannot go ahead. I made demand, and I want to renew the demand, I want the plans of the hull of the steamer "Virginian", her plating plans and such other—I don't know just exactly what to designate them, but I want to get those plans that show the location of her water tank forward and the location of her decks, and my intention is to demand the plans that are drawn to scale; in addition, of course, to the demand that I made in San Francisco, if there is anything in addition to them.

MR. MERRITT: That covers all that Lawrence told me you demanded. I don't know what it was.

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The witness Capers, after making measurements in the presence of Mr. Richards, states that:

"The back of the camera box is 10 inches by 11 inches.

The bottom edge of the lens, adjusted to its lowest point, is five and thirteen-sixteenths inches above the

top of the surface on which the camera rests. From this it can be raised a height of about two and one-fourth inches. At the time the photographs were taken the lens was substantially at the lowest point to which it could be adjusted.

The size of the plate is six and one-half inches by eight and one-half inches."

JOHN ALBERT VILLIERS, having been produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Merritt) State your full name?

A. John Albert Villiers.

Q. Where do you reside? A. Mukilteo.

Q. What is your business? A. Longshoring.

Q. How long have you been engaged in that business? A. About sixteen years.

Q. Do you know the steamer "Strathalbyn"?

A. I do.

Q. Did you assist in loading her at Port Blakely, in December, this month—

A. (Interrupting) I did.

Q. (Continuing) —this year. Had you ever loaded vessels with deckloads of lumber prior to that time?

A. Yes sir.

Q. Do you know how the "Strathalbyn's deckload was loaded at this time? A. Yes sir.

MR. HAYDEN: I want to object to the testimony on the ground that it is immaterial.

Q. (Mr. Merritt) Showing you the photograph marked "Capers' Exhibit G", I will ask you how much more load was placed on the vessel than is shown in that photograph, if you know? (Handing photograph to witness).

A. As far as I can see from here, you see you can't see the break aft there. It looked to be about the height of the timber, and that was a 10-inch tier.

Q. Were you there when she finished loading this time? A. I was.

Q. Do you know they fastened that deckload and the stanchions that held it on the side?

A. Do you mean how they placed the stanchions?

Q. No, how did they fasten them or bind them—if they do—do they bind them together in any way?

A. Well, when we left there they had not put the leashings on, but the leashings that they had ready to put on were chain leashings made fast to the rail and brought over the deckload, and at times they bring wire leashings around the stanchions and pull them tight or taut with the windlass.

Q. Have you ever helped in fastening the stanchions by a chain or cable around the stanchion and fastened or drawn tight with the windlass? A. Yes sir.

Q. I will ask you how much, in your opinion, from your experience in fastening deckloads of this kind, the stanchions of a size like that shown in this exhibit "G", could be sprung inboard in fastening them as I have just described?

MR. HAYDEN: I want to object to the question on the ground that it is not based on the facts in evidence in this case, and that the witness has not shown that he is competent to testify in connection with that subject matter.

Q. (Mr. Merritt) Assuming, in answering the question, that a deckload was loaded to a height of say one tier above that shown in exhibit "G", and then cables placed around the stanchions and drawn tight by steam wench, and that the stanchions were substantially of the size shown in exhibit "G" here, of say 10 by 10, how much in your opinion, from your experience as a longshoreman in tightening or fastening loads of that character, could they spring those stanchions inboard?

MR. HAYDEN: Same objection.

A. Will I answer that question?

Q. (Mr. Merritt) Yes.

A. With a properly placed stanchion—that is, this is a little lighter—you see where they heave in they leave a stanchion out there, they put that in afterwards; that is only one on each side, you see, and with the other that is properly placed they could not heave it in, no matter how much power you had on. I don't believe

you could heave it in more than three inches, at the most.

Q. If any of her deckload was light lumber instead of this heavy timber as shown in this exhibit "G", could you spring that stanchion in any more, and, if so, how much, in your opinion?

A. With the same size stanchions it would not make any difference in springing the stanchion in where the break of the lumber came with the deckload.

Q. How are these deckloads put on, loosely or solid, or how?

A. They are stowed tight as you can get them.

Q. Now, when you come to spring these stanchions and tighten them up as you have described, where does the spring of the stanchion come from, where does it start, that is, when does the stanchion commence to spring when you draw it up that way?

A. If the lumber is stowed properly out against the stanchion, it breaks right at the edge of the deckload.

Q. Right at the edge of the deckload? A. Yes.

Q. That is, you mean the top—

A. (Interrupting) Spring from there to the top.

(No cross examination. Witness excused.)

(Filed Feb. 25, 1914.)

L. CRAWLEY, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, in SUR-REBUTTAL, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Bogle) What is your full name?

A. Lawrence Crawley.

Q. What is your business?

A. Well, I am mate on the "Fulton" at the present time.

Q. I mean what is your general occupation?

A. Well, sailor, I have been for quite a while.

Q. How long have you been a sailor?

A. I have been on Puget Sound here for the last nine years—about nine years.

Q. Were you on the steamship "Flyer" on the night

of January 12th, 1912, at the time the "Virginian" and "Strathalbyn" were in collision? A. Yes sir.

Q. The "Flyer" was on the voyage from Seattle to Tacoma, was she? A. Yes sir.

Q. In what capacity were you engaged on the "Flyer" on this night? A. I was quartermaster.

Q. Quartermaster, with what duties?

A. I was at the wheel.

Q. The wheel is located in the pilot house, is it?

A. Yes sir.

Q. Who was in the pilot house with you?

A. Captain Burns.

Q. Do you remember of passing a large vessel in the vicinity of Pully Point? A. Yes sir.

Q. I wish you would describe how you passed the vessels and what changes in your course you made, if any?

A. Well, we were coming up behind this ship and we hauled off, we hauled to port a little, to clear the "Virginian" I guess—the big ship—and then we kept our course until after we went by and passed the next ship.

Q. You hauled your course to port; did that carry you to the westward? A. Yes sir.

Q. How far off did you pass the "Virginian", if you remember?

A. Well, in my judgment about 200 to 300 or 300 feet, something like that.

Q. Did you signal the "Virginian" at all as you passed her? A. Yes, I believe we did.

Q. Did you hear any response from the "Virginian"?

A. Well, that I could not say; I could not at present say.

Q. Now, after passing the "Virginian", did you hear the lookout report any other vessel?

A. After passing, yes, he did, he reported a steamer, reports the lights of a steamer.

Q. What lights did he report, if you remember? Did you hear the report?

A. Well, a white light ahead, sir.

Q. Did you see that white light, Mr. Crawley?

A. I thought I did.

Q. You thought you did?

A. I thought I did, yes sir.

Q. And where was the white light when you saw it or thought you saw it?

A. Well, that light was—seemed like it was in the ship—we were coming like this, in this direction, and the ship would be about that direction (illustrating), maybe a half a point off of our port bow, as near as I could judge.

Q. Did you at that time see any other lights except the white light on this larger vessel?

A. I was inside of the pilot house. I could not very well always tell, but I am pretty sure I did see a light, but I would not say whether I saw more than one light or not.

Q. What did you think that light was, what was the color of it? A. It was a white light, as I thought.

Q. I mean did you see any other lights?

A. No sir, no other lights.

Q. Now, you made no change in your course after passing the "Virginian" until after you passed the "Strathalbyn", did you?

A. No, no change, we still kept our course until after we went by.

Q. How was that course carrying you with reference to Robinson Point?

A. Carried us inside of Robinson at least a point.

Q. And did you afterwards pass this other vessel?

A. No, after we—we kept our course until after we passed this steamer and then one time we hauled right around, came right around back to the—

Q. (Interrupting) That was after the collision?

A. That was after everything was over.

Q. But prior to the collision you kept on this general course until—

A. (Interrupting) We kept on our same course.

Q. And how far did you pass off this steamer when you passed her abeam ?

A. Well, I don't think it will be over a quarter of a mile to a half a mile, something like that, as near as my judgment could say; that is about all I could say about it.

Q. As you were approaching this steamer, Mr. Crawley, were you coming closer to her, or your course coming closer or nearer parallel or spreading away from her course?

A. As we came to her we would be spreading from her, you see; if we came up to her she would be coming and we would be going like this, the direction of it. (Illustrating.)

Q. Now, Mr. Crawley, at the time you were looking and thought you saw a white light, were you looking through the pilot house window? A. Yes sir.

Q. Afterwards, did you see any side lights on her, as you passed her?

A. No sir, the windows were all down, as we went abeam and there was no side light that I could see at all.

Q. Did you hear the lookout report any side lights?

A. No sir, he didn't report no side lights.

MR. HAYDEN: I want to move to strike out the report of the lookout, on the ground that it is hearsay.

Q. (Mr. Bogle) Did you see the green light at all?

A. No, not any time until we came back after the collision was all over.

Q. You say that Captain Burns was in the pilot house with you? A. Yes sir.

Q. Was he in the pilot house when you passed the "Strathalbyn"?

A. Yes sir, he was there. He kind of got kind of nervous at the time we were going by the "Strathalbyn", too.

MR. HAYDEN: I move to strike that out as immaterial.

Q. (Mr. Bogle) When was this, Mr. Crawley—

MR. HAYDEN: (Interrupting) Same objection.

Q. (Continuing) —when you were abeam of her?

MR. HAYDEN: Same objection.

A. Right abeam.

Q. (Mr. Bogle) Right abeam? A. Yes sir.

Q. Did he make any remark about this side light?

MR. HAYDEN: Same objection; on the ground that it is hearsay.

A. He could not see no side lights at all.

Q. (Mr. Bogle) How do you know he could not see any side lights?

MR. HAYDEN: Same objection, on the ground that it is hearsay. This witness cannot tell how the captain knew—how he knew the captain could not see anything if he did not see anything.

Q. (Mr. Bogle) How did you know that he did not see the side lights?

A. He made the remark, he says, "She has not got no side lights; she has not got no light burning."

Q. Was that the time he seemed to get nervous?

MR. HAYDEN: I object to that on the same ground.

Q. (Mr. Bogle) Go ahead, answer.

A. Well, he was a little nervous at the time, yes.

Q. You say he got nervous?

A. He drops one window down and then the other came down—three windows came down, one window after the other.

Q. That was all the remark he made, was it?

A. That is all the remark—he says, "Those ships are getting close together"—something like that—he just made the remark. He didn't have much to say outside of dropping the windows down kind of lively.

Q. This light that he was talking about would be a port light, would it?

A. Well, port light was supposed—was all I could see, and he remarked the port light out; she didn't have no side light.

MR. HAYDEN: I move to strike it out—the last answer.

Q. (Mr. Bogle) Did you pay any particular attention to the signals passed between the "Flyer" and the "Strathalbyn"?

A. Well, I think first he gave a signal and we answered it.

Q. Did you pay any particular attention to the signals—to other signals blown by the "Strathalbyn"?

A. No, I didn't. I don't think I did. I heard some whistles after we passed, but didn't pay any attention to either of them.

CROSS EXAMINATION.

Q. (Mr. Hayden) Are you working on the steamer "Fulton" now? A. Yes.

Q. As mate? A. Yes sir.

Q. How long have you been on her?

A. I have been on her just one month the 25th—

Q. (Interrupting) Who is captain of her now?

A. Captain Stimson.

Q. Is Haynes the manager of the company?

A. I think he is.

Q. Erkenbach?

A. Or Mr. Erkenbach I know is assistant manager.

MR. BOGLE: I object to this as immaterial.

Q. (Mr. Hayden) How long have you been with that company? A. Just there a month.

Q. What were you doing between that time and the time of this collision?

A. I was mate on the "Sampson", on the "Comanchee", and I have been on all these boats up until a month ago I went on the "Fulton".

Q. On the "Fulton"?

A. Since a year ago in April.

Q. You drew up on the "Virginian" when she was north of Pully Point, didn't you?

A. When she was north of Pully Point? Well, we were about abeam of Pully Point, as near as I can judge, we were close to the point.

Q. You changed your course before you got to Pully Point, did you not? A. We did.

Q. To pass the "Virginian"? A. To pass the "Virginian", yes sir.

Q. You changed it how much?

A. We changed it—I would not say how much; we changed it at least a quarter of a point to clear her, to go by, and we still kept the course until we got by her.

Q. You were steering what course prior to your change of course for the "Virginian"?

A. How is that?

Q. What course were you steering before you changed your course to go by the "Virginian"?

A. Well, I could not tell you exactly at the present time what course we were steering at that time.

Q. You could not tell.

A. We were steering southeast by south five-eighths south, I think the course was, on the "Flyer"; that was the "Flyer's" course from Pully Point—or from Alki Point to Pully I think, I would not be sure.

Q. Do you have to, on that course from Alki to Pully, change your course at all, in the ordinary course of events, to go around Robinson?

A. We do. Yes, we have to haul to starboard about —I think about a quarter of a point, from Pully Point to Robinson Point, to get clear of Robinson.

Q. And you say you changed your course a quarter of a point before you got to Pully?

A. Before—we changed it to go by the "Virginian".

Q. A quarter of a point?

A. Yes, or more maybe, as far as I know; I would not exactly say that.

Q. But it is your best recollection now that you changed it about a quarter of a point?

A. Changed it between a quarter and half a point, we hauled to clear him. You see we were right on his track, you see.

Q. Coming right after him?

A. Right by him. Of course it might take a quarter, maybe a little more, to get clear of him.

Q. You don't know how much you did pull off?

A. No, I don't know, but I don't think we pulled off over a half a point, anyway, at the most.

Q. And you think you passed—got by the "Virginian" when you were opposite Pully Point?

A. Yes, about there.

Q. And where was the "Indianapolis"?

A. Well, she was just—now, if I recollect, I think we had just gone by it about a minute or something of that kind.

Q. Yes, that is what I was trying to find out.

A. I think we had gone by Pully just a little.

Q. You had gone by Pully just a little or went by the "Virginian" just a little before she got to Pully?

A. It was either one way or the other, now, I could not say for sure which way; either one side or the other; we were close to Pully Point, just pretty close.

Q. Where was the "Indianapolis" when you passed the "Virginian"?

A. She was a little later than usual, I think. I don't think we passed her at the same time. If my mind—I don't think she was down there as close that time, I don't think the "Indianapolis" was kind of inside at the time—or she was inside of us, that is right, that is right, she was inside of all of us, I remember now. I think she was inside of the whole works.

Q. Where do you usually change your course to go to Robinson? A. Right off of Pully.

Q. And why didn't you change it right off of Pully this night?

A. We didn't change off of Pully on account of this other ship, the "Virginian" and the "Strathalbyn", coming in sight.

Q. Did you see the "Strathalbyn"—is that one of the reasons you didn't change your course?

A. Yes sir.

Q. And if you hadn't seen the "Strathalbyn" you would have changed your course? A. Yes sir.

Q. And you would change it about off Pully, would you? A. We would change it off of Pully, yes.

Q. Now, about where did you pass the "Strathalbyn", that is, how far over from Pully Point toward Robinson Point, about half way or something of that kind?

A. No, we was not that far, we was not quite half way; I would not judge we were over two miles the other side of Pully.

Q. You think you were about two miles the other side of Pully—

A. (Interrupting) Well, I would not exactly say that, either, but that is just my judgment.

Q. You passed her about two miles the other side of Pully—passed the "Strathalbyn"?

A. Yes, we ran a minute or two by Pully.

Q. And how long does it take you to run from Pully to Robinson on the "Flyer"?

A. I think it takes about twelve minutes; I am not sure.

Q. And then you must have run about six minutes?

A. Well, somewhere between—maybe five or six minutes, probably, I would not say for sure.

Q. That is, you ran that up to the time you passed the "Strathalbyn"? A. Yes sir.

Q. You saw the "Strathalbyn's" headlight when you were about off Pully?

MR. BOGLE: I object to that. He didn't testify to that.

MR. HAYDEN: Well, I am asking him.

MR. BOGLE: Well, ask him if he did.

MR. HAYDEN: I did ask him.

MR. BOGLE: No, not in that form—I object to the form of the question.

Q. (Mr. Hayden) Go ahead, answer the question.

A. Well, at the time we were closer—we were the other side of Pully when the lights of the ship were reported at all, we were up to Pully Point.

Q. You were up to Pully Point?

A. Yes, up by it.

Q. Just passing the "Virginian"?

A. We passed the "Virginian" first. We passed her before I thought I heard anything about the "Strathalbyn" at all, we had passed her.

Q. How far past him had you gone?

A. Well, I would not think over two or three ship's lengths, I don't think.

Q. Then you heard the lookout report a white light?

A. Yes sir.

Q. Now, I understand you to say you thought you saw another white light besides the one that you heard reported? A. Well, no, I didn't.

Q. You didn't see any other white light?

A. Not as far as I know. I don't think I did. I might have seen another white—

Q. (Interrupting) Did you testify before the inspectors?

A. I saw—as I thought at the time I saw two lights, but I could not say for sure whether I saw them or not, now, at the present time.

Q. You just thought you did see them?

A. Of course we never do—inside of a closed window, on a dark night, you can't see anything outside very

well; but I am pretty sure I saw a white light.

Q. There was not any trouble in distinguishing this light that was seen, for a ship's light, was there?

A. No, I would not think so.

Q. You saw that light, did you, until you passed the "Strathalbyn"?

A. Well, I will tell you the way I saw it—

Q. Interrupting) I just asked you if you saw that until you passed the "Strathalbyn"?

A. I saw a light at one time, but didn't look to pay any more attention to it at all, I was steering a course.

Q. Were you steering a course?

A. I was steering a course, yes sir.

Q. You were keeping your eye on your compass more than you were on anything ahead?

A. Yes, more than on anything ahead. The light reported, of course, you would raise your eyes to look to see; that would be all there would be to it.

Q. So you were not watching this steamer anywhere near close at all?

A. No sir, not at all, I was not.

Q. So far as you observed you saw no red light on this steamer? A. No sir, no red light.

Q. Did you ever pass a steamer without seeing a red light or a green light, side lights?

A. Well, not very often, that is, if we were close enough. Of course if we were a mile or two off—

Q. (Interrupting) I mean when you pass them do you always notice whether they have a red light or green, or not? A. Yes, I always notice that, of course.

Q. You say you were on the "Comanche". That is one of Captain Green's boats, isn't it? A. Yes sir.

Q. And the "Flyer" is one of Captain Green's boats?

A. Yes sir. I have worked for that company for about—well, since I have been on Puget Sound.

Q. Did you testify before the United States Inspectors? A. Yes sir.

Q. When you had passed the "Strathalbyn", did you see how she appeared to be heading?

A. Well, she was—I could not exactly tell that, I

don't know how—she was heading south, of course, but I don't know what course.

Q. Did you hear her blow a whistle, when she was about opposite your bow, for the "Virginian"?

A. I think she did.

Q. Did you notihe then how she was heading?

A. Well, we were abeam; I could not say.

Q. You could not say. So long as you saw this masthead light it was a steady light, was it?

A. Well, I took a glance with my eye at it and that is about all I would pay any more attention to.

Q. It looked like a steady light, did it?

MR. BOGLE: I object to that.

A. It looked like a steady light.

Q. I presume when you got back you looked more at the boats, didn't you?

A. Well, when we were right up on the side I could see her plainer.

Q. You were not steering in the boat's course coming back to them?

A. No, just going around, shashaing around there.

Q. And you uade a turn to port?

A. We astarboard our helm.

Q. Astarboard your helm and came around to port?

A. Yes.

Q. Up here toward the Des Moines shore?

A. The Pully shore.

Q. You know where Des Moines is, don't you?

A. Des Moines is on—

Q. (Interrupting) The mainland? A. Yes.

Q. You turned then to the east—eastward?

A. We went to the eastward, yes sir.

Q. And you came up alongside the "Strathalbyn" first?

A. Well, I would not say sure which one we did come to first. Yes, we did.

Q. Now, how could you find where the "Strathalbyn" was? A. Well, we went to both of them.

Q. How could you tell where they were?

A. We could see them.

Q. What could you see? A. See a ship.

Q. What ship, what about the ship?

A. Well, we came over there right up close to her, we ran right up to her, to find out if she needed any assistance.

Q. How did you know where she was?

A. Well, we must have seen her or we could not have come over there.

Q. And then I want to know what you saw.

A. Well, I saw a green light when we came over.

Q. And did you see any other light that you remember now?

A. Well, I was not paying much attention, sir, as we were running around—

Q. (Interrupting) See the outline of the ship?

A. I could see the outline of the ship, yes, because we were right up close to her.

Q. And could you see the "Virginian"?

A. I could when we got up to her.

Q. Could you see her before you got up to her?

A. Yes, I think we could.

Q. You could see her lights when you turned, couldn't you?

A. In the pilot house, movements like that, of course it was my business to attend to the wheel and the compass, and outside of that I was not paying much attention. Of course the captain gave me the course I was steering, as he gave them to me, "port," "starboard" and "steady" and that way, and I was doing as he told me. As far as my seeing the ships, I don't pay much attention to them.

Q. When you first noticed the light on the "Strathalbyn", did you notice where Pully Point was?

A. We were by, I think, we were by Pully Point.

Q. Did you notice where Robinson Point was?

A. Yes sir, Robinson Point was—

Q. (Interrupting) Did you notice where the "Strathalbyn" was, fixing a position with respect to a line directly between you and Robinson Point light?

A. Well, I should think that her position would be coming kind of a little from Pully, the way I sized it at the time.

Q. Would it be to the east or to the west of a line

between your vessel, the "Flyer", when you first noticed the "Strahalbyn's" light, and Pully Point light?

A. Well, I think she was a little to the westward of Pully.

Q. A little to the westward of Pully?

A. I would not say. Yes.

Q. That is your best recollection at this time?

A. That is as near—I can't very well say this, you know, on account of being inside of the pilot house, I could not exactly say.

Q. Well, then, do you recollect about it, Mr. Crawley?

A. As we were coming from there, like she was coming like this and we would be coming like this (illustrating), like that way, the way I see it—a little more up, you know (illustrating); we would be coming like this, you see, up, that direction, in my judgment. (Illustrating.)

Q. Now, then, that seems to be the course that she was holding?

A. Yes, she didn't seem to change her course, as far as I could see. I didn't pay much attention to her changing her course, but I know we changed our course and held it until we went by her; how much I could not say.

Q. In the navigation of all steamboats you have ever been on, there is a tendency of the steamer to swing more or less, isn't there?

MR. BOGLE: I object to that as improper and immaterial.

A. Well, sometimes ships don't steer good or you can't always tell—

Q. (Interrupting) They don't run along on a straight line, do they, like a railroad train on the tracks?

A. There are ships that does, they don't vary a quarter of a point in ten miles—some ships.

Q. You mean you can set the wheel of the ship and let it stay there and she will run ten miles without changing a quarter of a point?

A. No, I mean a man is there, he can keep her on the course for ten miles without bringing her off at any time.

Q. You must have to play your wheel all the time to keep her steady?

A. To keep her steady. If she is a very little off at any time—

Q. (Interrupting) And no ships will run straight unless the wheel is handled to keep them so?

A. Well, there are some ships will run quite a ways without the wheel being moved at all.

Q. Yes, a little ways, but that does not amount to much in any practical navigation, does it?

A. No, a man is not supposed to leave the wheel and go away from it at any time; there is always a man there, it don't make any difference how good they steer.

Q. And the man stands at the wheel and when he sees the ship commence to swing either one way or the other, then he moves the wheel to counteract it?

A. Yes sir.

Q. So that the ship swings, as a matter of fact, before the wheel is moved?

A. Well, she does not get a chance to swing very much—

Q. (Interrupting) But she starts to swing, she moves some? A. She might move a little.

Q. And it is that movement that calls the attention of the helmsman to the fact that he has to move his wheel to check it? A. Yes sir.

Q. Did you go up to the "Strathalbyn" after you made your swing around and after the collision, abaft her beam or forward of her beam?

A. Well, that I could not say, sir.

Q. You were forward of her beam somewhat when you saw her green light?

A. Saw her green light, coming right abeam of her.

Q. Right abeam of her?

A. We were heading right onto her when I saw her light; that is the only time I did see it—right onto her green light.

Q. Then you went around the stern of her?

A. I would not say which way we did come around; I don't remember; I didn't pay much attention to it.

Q. Do you remember seeing the masthead light when you came up to her after the collision?

A. No, I don't. I don't remember about—any attention to it.

RE-DIRECT EXAMINATION.

Q. (Mr. Bogle) Mr. Crawley, do you have any difficulty in keeping a vessel on a course if there is a man at the wheel?

A. Very little, unless you are in strong tide-rips or something of that kind, you might swing a little.

Q. Any strong tide-rips between Pully and Robinson Points? A. No, not that I ever noticed.

Q. When you say the "Indianapolis" was inside of the boats, do you mean he was over towards Vashon Island or in—

A. (Interrupting) She was nearer Pully. As near as I can judge, I think the "Indian" was around there in that direction, I think, afterwards; I am not sure whether it was afterwards or before, I could not say at the present time.

Q. What do you mean by inside of the boats, do you mean in toward the shore, mainland?

A. Closer to Pully Point, that is, as she—

Q. (Interrupting) Well, I just wanted to get which side you meant.

A. Yes, at Pully Point. As near as I could judge, that night I think she passed closer in, and I think she passed ahead of these ships, before we met those boats.

Q. I understood you to say on cross examination that you usually changed your course at Pully?

A. We do, yes.

Q. But you didn't do it this night on account of the "Strathalbyn"?

A. We didn't do it this night on account of the "Strathalbyn".

Q. Didn't you change your course at all in the vicinity of Pully?

A. We hauled off clear of the "Virginian" and kept that course.

Q. You did not pull back—

A. (Interrupting) We didn't come back for Robinson until after these ships had been clear and gone.

(Witness excused.)

HARRY ASHURST, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, in SUR-REBUTTAL, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Bogle) What is your full name?

A. Harry Ashurst.

Q. What is your business or occupation?

A. I am deck-boy on the "H. B. Kennedy".

Q. How long have you been a sailor or deck-hand, following the sea?

A. Well, I have been following the sea pretty near all my life; since I left school.

Q. Approximately how many years is that?

A. Seven years.

Q. Were you on the steamer "Flyer" on the night of January 12, at the time the "Virginian" and "Strathalbyn" were in collision? A. Yes sir.

Q. In what capacity? A. I was lookout.

Q. When did you go on the lookout?

A. At seven o'clock.

Q. The vessel then was on what voyage?

A. Running from Seattle to Tacoma.

Q. Do you remember passing the "Virginian" in the vicinity of Pully Point? A. Yes sir.

Q. In approaching Pully Point, how was your vessel running in respect to the "Virginian"?

A. Well, the "Virginian" was ahead of us and a little to the starboard.

Q. A little to your starboard? A. Yes.

Q. Were you coming up under her stern?

A. Yes sir.

Q. Now, in passing her, what manoeuvers did you make?

A. Well, we—from what I could judge, we went to the starboard.

Q. You went off to her starboard, did you?

A. Yes sir.

Q. Did you give her any passing whistle?

A. Yes sir.

Q. What whistle was that? A. One whistle.

Q. Did the "Virginian" answer that whistle?

A. Yes sir.

Q. From where you were standing on the lookout, can you tell whether or not your vessel—what course she is on or what changes she makes?

A. Yes, I can tell when—whether the boat is going straight ahead or whether she is veering off.

Q. Did she change her course any to pass the "Virginian"? A. Yes sir.

Q. Now, after passing the "Virginian", did you see any other vessel—a light on any other vessel this night and report it? A. Yes sir.

Q. What light was that and when did you see it—first see it?

A. Well, when we passed the "Virginian", I reported a light about—I saw a light approaching about a mile away, I guess.

Q. And how far did you pass off the "Virginian", off her starboard side?

A. Oh, I should say about 300 feet.

Q. And had you passed the "Virginian" when you saw this light ahead? A. Yes sir.

Q. You judge it was about a mile away?

A. Yes sir.

Q. And where was that light, how did that light bear from you, straight ahead, off your starboard or off your port?

MR. HAYDEN: Let him answer where it bore.

Q. (Mr. Bogle) Was it straight ahead, off your starboard or off your port bow?

A. When I reported it, it was straight ahead, sir.

Q. And about a mile distant? A. Yes sir.

Q. At that time what lights did you see, Mr. Ashurst?

A. I saw a masthead light and a range light. I reported white lights.

Q. You saw two white lights? A. Yes sir.

Q. Now, where were you standing on the "Flyer", on the lookout? A. On the bow, sir.

Q. At the extreme forward part of the ship?

A. Yes sir.

Q. No obstructions in your way, were there?

A. No sir.

Q. And in looking at these lights, did you have to look up or look down to see them; in other words, were they higher than you were?

A. Yes sir, they was higher than me; I was looking at it at an angle like that. (Illustrating.)

Q. Did you see any other lights on her at that time?

A. No sir, I did not. I just saw the white lights—the two white lights.

Q. Did you report those lights just as soon as you saw them? A. Yes sir.

Q. Now, did this other vessel afterwards give you any passing whistle?

A. The "Strathalbyn"?

Q. Yes. A. Yes sir, she blew one whistle.

Q. Did your vessel answer that? A. Yes sir.

Q. And how long was that after you had reported the lights?

A. Well, it seemed about a half a minute—just somewhere about a half a minute, I think.

Q. And how did these lights bear from your vessel at that time?

A. Well, we was veering off all the time.

Q. Veering off in which direction?

A. To out-board like—to the starboard.

Q. Did you notice how your course was with reference to Robinson light?

A. Yes sir, we was—we was not on our regular course, I could see that.

Q. Were you more to the east or more to the west than your regular course?

A. Well, we were going to—veering to the starboard all the time.

Q. To your starboard? A. Yes sir.

Q. How far did you pass off the "Strathalbyn"?

A. Well—oh, I should say about 400 feet.

Q. Could you see her port light at that time?

A. No sir.

Q. Did you at any time prior to the collision see either her starboard green light or her port red light?

A. No sir. No, I didn't, or else I would have reported it.

Q. You did not report any side lights?

A. No sir. Just the white lights.

Q. Do you report side lights when you see them?

A. Yes sir.

Q. Were you looking for side lights this night on this vessel?

A. Well, I was not exactly looking for them, but if I had of seen them I would have reported them.

Q. Was your duty as a lookout to look for lights and report them? A. Yes sir.

Q. As you were approaching the "Strathalbyn", was your course parallel or were you spreading away or getting closer to her?

A. We was getting away from her.

Q. From where you were standing in the extreme forward part of the vessel, can you tell exactly how a light bears from the course of your vessel—from the course your vessel is taking? A. Our light—

Q. (Interrupting) I say, from where you are standing in the extreme forward part of a ship, can you tell exactly how a light bears from the course of your vessel; in other words, can you tell whether a light is directly ahead or off either bow? A. Yes sir.

Q. And as you approached this vessel, did her lights remain directly ahead or did they get off on one or the other bow?

A. No, as we approached them—well, you see they was going at an angle all the time, because we was going like we were going that way (illustrating) all the time.

Q. Spreading? A. Spread.

Q. Spreading away, you mean?

A. Yes sir, we were spreading away from her, and that would put the lights on a different angle all the time.

Q. Could you tell what the course of the "Strathalbyn" was?

A. No sir, I could not exactly tell you what the exact course, but she seemed to be—you know—going from Robinson Point to Pully Point.

Q. How could you tell that, from her masthead and range lights? A. Yes sir.

Q. Were you, after the collision on this night, or at

any time during this night, in a position where you could see the port light on the port side of her?

A. Yes sir.

Q. After the collision?

A. Oh, after the collision? Well, I could not say about that—not after the collision.

Q. How did you say this light bore from your vessel when you first saw it and reported it?

A. Well, I reported that there was a light ahead—a white light ahead, that she was just—just a little off our port bow, just a little, that was all; it was not much.

Q. Did you hear the "Strathalbyn" whistle when she was about off of your bow or abeam of you, give a second whistle? A. Yes sir, I heard her.

Q. Where was she when she gave that second whistle, if you remember?

A. Well, she was almost abeam of us.

Q. Did you hear any other whistles after that?

A. Yes sir.

Q. What other whistles did you hear?

A. Well, I heard about three or four short blasts.

Q. How long was that after this, as near as you can remember? I realize it is a long time since this collision.

A. What, after he blew the first whistle?

Q. No, after he had passed you and blown one whistle when about your beam?

A. Well, he blew one whistle when he was almost abeam of us and then I guess it would be—let's see, it would be only a few seconds, I guess, about twenty or thirty seconds, then he started, I heard a lot of short blasts then.

Q. That is the best of your recollection now, is it?

A. Yes sir.

Q. Did you hear her give any other passing whistle from the time she was abeam of you, prior to the time these short blasts were given?

A. No sir, I heard—I only heard the whistle that he gave when he was just about abea mof us.

Q. Was that the last whistle you heard before the short blasts? A. Yes sir.

Q. Did you hear any other whistles after the short blasts?

A. Yes, I heard some more of the blasts blowing.

Q. How long were those after the first of the blasts until the second short blasts?

A. Oh, it was almost directly after.

CROSS EXAMINATION.

Q. (Mr. Hayden) You are on the steamer "Kennedy" now? A. Yes sir.

Q. That is one of Josh Green's boats, isn't it?

A. No sir, I think it is owned by Mr. Kennedy.

Q. Who? A. Mr. Kennedy.

Q. You were working for Josh Green at the time of this accident, were you not? A. Yes sir.

Q. And you remember very distinctly having seen two lights on the "Strathalbyn"? A. Yes sir.

Q. The reason you say that you did not see the red light or green light as you were approaching the 'Strathalbyn" was because you didn't report it?

MR. BOGLE: I object to that. That is not what he said?

Q. (Mr. Hayden) Is that it?

MR. BOGLE: He testified, positively, that he did not see it.

Q. (Mr. Hayden) Is that it?

A. No, I didn't see no—

MR. HAYDEN: (Interrupting) I object to—I just want to put in my objection to these attempted educational objections of the attorney to his witness.

MR. BOGLE: I am putting them in entirely—

MR. HAYDEN: (Interrupting) I am asking questions here. He can say "Yes" or "No" to them. I have that right, I think, under cross examination, without interruption.

MR. BOGLE: You are misquoting his original testimony, is the reason I objected.

Q. (Mr. Hayden) Now, as I recollect your testimony, you said that you did not remember seeing either a red or a green light on the "Strathalbyn"?

A. That is right.

Q. Is that so? A. I did not see them, no—

Q. (Interrupting) You also said, if I remember—

MR. BOGLE: (Interrupting) Let him answer that. You answer the question.

MR. HAYDEN: He answered it.

MR. BOGLE: Answer the question.

MR. HAYDEN: He did answer it.

MR. BOGLE: Yes, you shut him off when he was going to finish it.

(Question and answer read.)

Q. (Mr. Hayden) I understood you to say that it was your custom to report the lights, whether you saw a red light or a green light or a masthead light?

A. Yes sir.

Q. Is it your custom to do that after you have reported the steamer's lights, do you report every light that makes its appearance on the same seamer? In other words, if you first see the steamer's red light you report a red light, don't you? A. Yes sir.

Q. And then if you first see a green light, you report a green light, don't you? A. Yes sir.

Q. And if you see a masthead light you report a masthead light, don't you, or a white light?

A. We don't exactly say a masthead light.

Q. What do you say? A. A white light.

Q. A white light? A. Yes.

Q. After you have reported those lights, you don't keep on reporting every change of light, do you?

A. No sir.

Q. That is what I thought. Now, you estimate, if I remember correctly, that you saw the "Strathalbyn's" white light at least a mile off? A. Yes sir.

Q. And reported it while it was a mile off?

A. Yes sir.

Q. And reported it when it was a mile off?

A. Yes sir, I reported it as soon as I could see it.

Q. Do you remember some young man on the bow of the "Strathalbyn", talking to you that night about this time—I mean on the bow of the "Flyer", talking to you about this time that you saw the white light? A. No sir.

Q. Did you have any conversation with any young men at all on the bow of the "Flyer" after you had seen the "Strathalbyn's" white light and before she passed you? A. No sir.

Q. After the "Flyer" had passed the "Virginian" she kept a straight course, didn't she? A. No sir.

Q. Did she veer first to the starboard and then to port? A. No sir, she veered to starboard.

Q. Did she keep turning to starboard all the time?

A. From what I can judge, for quite a ways she did.

Q. Kept turning off all the time to starboard?

A. Yes sir.

Q. Do you remember seeing Pully Point light after the "Flyer" had passed the "Virginian"?

A. No sir, I don't recollect looking for it at all.

Q. You don't remember seeing it, do you?

A. Well, I don't remember seeing it, but I never looked for it.

Q. Do you report Pully Point light when you see it?

A. No sir.

Q. You don't report the red light when you see it ahead, then?

MR. BOGLE: Oh, I object to that.

Q. (Mr. Hayden) Is that it? On that run from Pully Point to Robinson Point, you don't report a red light when you see it ahead; is that it?

MR. BOGLE: I object to that. He has not testified to that.

MR. HAYDEN: You heard me ask him the question, didn't you?

A. If I see a red light I report one.

Q. (Mr. Hayden) Don't you see the Robinson Point light when you are on that run?

MR. BOGLE: You have been asking about Pully Point light; that is the one he said he didn't see.

MR. HAYDEN: Oh, I beg your pardon then.

Q. (Mr. Hayden) I ask you now if you reported the Robinson light that night? A. No sir.

Q. Did you see the Robinson Point that night when you were between Pully Point and Robinson Point?

A. Yes sir, I seen Robinson Point.

Q. How soon did you see that light that night, how far had you gone beyond Pully Point when you saw the Robinson Point light?

A. Well, I could see Robinson Point from Pully Point.

Q. Well, could you see it before you had passed the "Virginian"?

A. Well, I never—I didn't look for it; I guess I could if I had—

Q. (Interrupting) But you didn't see it, that is what I am asking you, if you actually saw it as a matter of fact? A. I saw Robinson Point light after—

Q. (Interrupting) Before you passed the "Virginian"?

MR. BOGLE: Go ahead, finish your answer.

Q. (Mr. Hayden) Before you passed the "Virginian", did you see Robinson Point light? That is the question I want answered—on this night?

A. I remember seeing Robinson Point light after we passed the "Virginian".

Q. Do you remember seeing it before you passed the "Virginian"?

A. I don't remember seeing it before we passed the "Virginian".

Q. Do you remember how the "Flyer" was heading with respect to Robinson Point light after you passed the "Virginian"—or put it this way: After you got by Pully Point, commencing with the time that you went by Pully Point?

A. Well, after we passed the "Virginian"—let's see—after we passed the "Virginian" the boat seemed to go on its usual—on its usual course; but then when the "Strathalbyn" came in sight then the boat went off the course then.

Q. Do you judge that because you were looking forward and had some object on shore—on the other shore to go by? A. Yes sir.

Q. Now, I want to see if I get this right, Mr. Ashurst. When you came up astern of the "Virginian", the "Flyer" veered off to starboard to pass her? A. Yes sir.

Q. That is right. Then when she had passed the "Virginian", she veered back to her regular course that she would take to Tacoma, for a while, until she saw the "Strathalbyn", and then she veered off again to starboard; is that right?

A. Yes sir, that is as near as I can recollect.

Q. Do you know how fast the "Flyer" was going that night? A. No sir, I don't know the exact—

Q. (Interrupting) She makes about fourteen and a half or fifteen knots, don't she? A. Yes.

Q. Now, you have mentioned time in here. Do you mean to be exact about the time, did you take any observations, from your watch or anything else, that night, so that you can tell whether when you say a half a minute it was actually thirty seconds?

A. Well, no sir, I had no watch at all.

Q. When you say the time between the time that you saw the "Strathalbyn" and reported her lights, up to the time that she gave you the passing whistle, was about a half a minute, do you mean to be exact about that time?

A. No sir, no exact, because I had no watch on me.

Q. And I suppose the same answer is true as to the time between the "Strathalbyn's" giving the one whistle to the "Virginian" and the danger signals?

A. Yes sir.

Q. If you had seen the red light on the "Strathalbyn" first you would have reported a red light, would you? A. Yes sir.

Q. If you had seen the green light on the "Strathalbyn" first, you would have reported a green light?

A. Yes sir.

Q. And if you had seen the masthead light on the "Strathalbyn" first you would have reported a white light; is that right? A. If I had seen it first.

Q. Yes, and you did see it first, you saw the masthead light on the "Strathalbyn" first, didn't you?

A. Yes.

Q. You reported a white light that night?

A. Yes sir.

Q. And you reported it was right ahead, did you?

A. Yes sir.

Q. Now then, you would not report the red light on the "Strathalbyn", or any other vessel, if it appeared after you reported the white light to the captain, would you?

A. Not unless he would have been coming dangerously near.

Q. Yes. Well, of course the "Strathalbyn" didn't come dangerously near at any time, to you, did she?

A. Well, she would have done it if we hadn't of gone off.

Q. The captain was watching his business then and he went off—

MR. BOGLE: (Interrupting) I object to that. That is entirely immaterial. This man does not know what the captain was doing.

Q. (Mr. Hayden) You would judge the captain was watching his business, by the way the vessel was handled, wouldn't you?

MR. BOGLE: I object to that as immaterial. He does not know anything about what the captain did.

Q. (Mr. Hayden) Answer.

A. Well, from what I saw myself, the captain, he was getting out of the way of the approaching vessel.

Q. That is what he ought to do, isn't it?

MR. BOGLE: I object to that. This witness has not qualified as a navigation expert. He is testifying to the facts. You can put these little things on the record, if you think it will help you any.

Q. (Mr. Hayden) Did you watch this white light of the "Strathalbyn" very closely from the time you reported it until it passed you?

A. Well, I didn't watch it any closer than what I would watch any other boat; just ordinary.

Q. What is ordinary with you? When you are meeting a boat coming to you and you see her lights, what do you ordinarily do?

A. Well, I first make sure what lights they are.

Q. And what else do you do?

A. Then I report them.

Q. Then what else do you do? Do you pay any more attention to them at all?

A. Yes, I look at them now and again. I don't keep my eyes fastened on them, you know.

Q. You have got other things to do, in other words you have got to keep watching out for lights all the time, haven't you? A. Yes, sir.

Q. So after you once report a light, you don't pay so much attention to that light, but keep looking for some other light that might be coming out of the darkness somewhere? A. Yes, that is the rule.

Q. Did you see this light that you took to be the masthead light, and the range light, both at the same time?

A. Did I see them both at the same time?

Q. Yes, when you first picked up either of these lights, did you see them both? A. Yes, sir.

Q. Did you continue to see both of them from time to time until the "Strathalbyn" had passed the "Flyer"?

A. Yes, sir, I seen those lights.

Q. You say that the "Strathalbyn" kept coming along apparently crossing your course, so that you had to keep veering the "Flyer" to starboard all the time to pass her; is that right?

MR. BOGLE: I object to that. He didn't say that. He didn't say she was crossing his course.

Q. (Mr. Hayden) Is that right?

A. She was not—when I reported her—when I reported the "Strathalbyn," she was almost—I reported her lights head-on, she was almost directly ahead of us, but if there was any it was just a little on the port, on the port bow.

Q. Yes.

A. Well, while she was coming along, and we was —then our boat went off this way.

Q. Went off to the starboard?

A. To the starboard.

Q. And how did the "Strathalbyn" keep coming?

A. Well, the "Strathalbyn," she was—she seemed to be coming just the same.

Q. Yes. Did you have to keep on veering your boat off to the starboard all the time to pass her?

A. Yes, sir, from what I could see, the boat—when I was on the bow of the boat it was going off her course all the time.

Q. Was that because the "Strathalbyn's" course was different from the "Flyer's" course so that the "Strathalbyn," if she continued on her course, was getting across the course of the "Flyer"?

A. No, the "Strathalbyn" was coming right—she was almost on the "Flyer's" course; she was not crossing the course, she seemed to be head-on, see. The "Flyer" was going this way (illustrating) and the "Strathalbyn"

was coming almost in a direct line, but, as I say, if it was any it was a little off to port—the "Strathalbyn"—just a little, if there was any.

Q. So all that the "Flyer" veered her course at all was enough to go 400 feet off the "Strathalbyn"?

MR. BOGLE: I don't think the witness has said that.

A. Yes.

Q. (Mr. Hayden) That is what I am asking you.

A. When we got abreast of the "Strathalbyn," from what I can judge from the—the distance would be about 400 feet.

Q. So that if the "Strathalbyn's" course and the "Flyer's" course were the same, except in opposite directions, and the "Strathalbyn" held her course, the "Flyer" only veered off enough to go 400 feet to the port of the—that is so that the "Strathalbyn" was 400 feet on the "Flyer's" port side? A. Yes.

Q. And you think that now, you say, you saw those lights or just the masthead light and the range light about a mile off?

A. Yes, sir, they was a mile when I reported them.

Q. And the "Flyer" started to make this veering of her course at the time you reported the lights?

A. Just about the time, yes, sir.

Q. As I understand you, you say that during all the time the "Strathalbyn" was approaching you, you saw neither her green light nor her red light?

A. No, sir.

Q. That is the best recollection you have got on it at this time, is it? A. Yes, sir.

Q. Did you see any other lights on the "Strathalbyn" at all, except the masthead and this range light, that you have got any recollection of now, did you see any lights in her cabins or port holes or anything of that kind?

A. Well, I have no recollection of that; I would not take much notice, even if I did—about the lights in the port holes.

Q. Did you take any notice whether you could see the outline of the "Strathalbyn" as you were approaching her? A. Yes, sir.

Q. Saw her on the water?

A. I could see her on the water.

Q. Could you see the loom of her for quite a little distance? A. Yes, sir.

Q. Could you see that while she was ahead of you?

A. Yes, sir.

Q. About how far do you think you could see the loom of her?

A. Well, it was pretty—the night, it was rather clear, I guess I could see the loom of her 400 feet away, I guess, because I remember seeing the loom of her when she passed us.

Q. Yes? A. And that was quite a ways off.

Q. Do you remember seeing the loom of her before she passed you, while she was coming up to you?

A. No, I do not remember.

Q. You might have seen it, but you didn't pay any attention to it?

A. I didn't pay any attention to that.

Q. You never expected to be asked any questions about it at that time, did you?

MR. BOGLE: I object to that as immaterial.

A. No, sir.

RE-DIRECT EXAMINATION.

Q. (Mr. Bogle) Mr. Ashurst, is your recollection very clear as to whether or not you saw the loom of this ship, the "Strathalbyn," when you were abeam of her?

A. Yes, sir, I remember seeing the loom of the "Strathalbyn" when she was abeam of us.

Q. What do you mean by the "loom," what did you see? A. Well, the boat itself.

Q. You mean you saw the whole of her—could you see her hull? A. Yes, sir, I saw the boat.

Q. Was the "Strathalbyn" higher out of the water than the "Flyer"?

MR. HAYDEN: I object to this as immaterial and cross-examining his own witness.

(Question read.)

Q. (Mr. Bogle) If you could tell when you passed her, that is what I am getting at?

A. Well, I don't know whether she was any higher

out of the water or not, but she was a bigger boat, I could see that.

Q. She was a bigger boat? A. Yes.

Q. Were all of the "Flyer's" cabin lights lit at this time? A. Sir?

Q. Were all the "Flyer's" cabin lights lit when you passed the "Strathalbyn"?

A. Well, I don't know about the "Flyer's" cabin lights. You see I didn't make notes on that, I was right on the bow.

Q. You don't know the lights in the passenger cabins were lit, or not, do you?

(No response.)

Q. Do they ordinarily keep those lights lit on the voyage between Seattle and Tacoma—lights in the passenger cabins? A. Inside.

Q. That is what I mean, inside. A. Yes, sir.

Q. In testifying about seeing the masthead and range lights, what did you see, did you identify them as masthead and range lights, or did you see two white lights?

MR. HAYDEN: I object to it as leading, and I object to it on the ground that it is cross-examining his own witness.

A. Oh, I seen—I saw the two white lights, but I knew what they were.

Q. (Mr. Bogle) You took them to be a masthead and range light, did you? A. Yes, sir.

Q. And when you saw this white light, what did you report?

MR. HAYDEN: I object to that as already been gone over in his direct examination, and he has been cross-examined on it.

Q. (Mr. Bogle) In what words did you report that?

A. I said, "There is a white light ahead, sir."

Q. Now, Mr. Ashurst, were you at that time looking for side lights?

MR. HAYDEN: I object to that as not proper redirect examination.

A. Well, if they had been—if I had seen them I would have reported them.

Q. If you had seen them after you had reported the masthead light slightly off your port bow or directly ahead, either one of the side lights, would you have reported it?

MR. HAYDEN: I object to that. The witness has been asked that identical question and he said that he would not.

MR. BOGLE: In the form that you put it, he said he would not. I want to see whether he understands it, or not.

MR. HAYDEN: You can have the witness contradict himself, if you want him to.

MR. BOGLE: I am not trying to get him to contradict himself.

A. Now look: If I had seen—as I said, when I seen the masthead light and the range light, I reported them lights. Now, if that—if I had seen a red light, I would not have reported it—not unless it was dangerously near.

Q. (Mr. Bogle) Well, as a matter of fact, Mr. Ashurst, did you see a red or a green light as you were approaching the "Strathalbyn"? A. No, sir.

Q. Did you see a red light when you were abeam of the "Strathalbyn"? A. No, sir.

Q. You have testified that your testimony as to time here was merely approximate, to the best of your recollection at this time? A. Yes, sir.

Q. Does that apply also to your testimony as to distances?

A. Yes, sir, I could not give you the exact—it is only a matter of forming it up.

Q. Well, I say, to the best of your recollection now?

A. Yes, sir.

Q. From where you were standing on the bow of the vessel, could you tell any change in her course—the bow of the "Flyer"?

MR. HAYDEN: I object to that. He testified about that fully.

Q. (Mr. Bogle) Could you tell whenever her course was changed? A. Yes, sir.

Q. Now, you say she changed her course to star-

board to pass the "Virginian," and then she straightened back on her course for Robinson?

A. Yes, sir, she seemed to go on her own course again after we passed the "Virginian."

Q. How long was she on that course which she took to pass the "Virginian" before she changed back on her course for Robinson?

A. Well, to the best of my recollection he seemed to be on about five minutes.

Q. On his course that he took to pass the "Virginian"?

MR. HAYDEN: That is not what he said.

MR. BOGLE: That is what I asked him.

A. When he passed the——

Q. (Mr. Bogle) You said he changed his course to starboard to pass the "Virginian"? A. Yes, sir.

Q. And that afterwards he changed his course back onto his regular course?

A. Yes, that is the way it looked to me.

Q. How long was he on that course which he took to pass the "Virginian" before he changed back on his regular course?

A. Oh, well, he seemed to go back onto his course again as soon as we passed the "Virginian."

Q. And he ran on that course, you say, until you reported the lights of the "Strathalbyn"?

A. That is the way it looked to me.

Q. How long was he running on that course before you reported the lights of the "Strathalbyn"?

A. Well, seemed to be about five minutes, it seemed to me to be about five minutes.

Q. That he was running on his regular course?

A. Yes, sir.

Q. Before you reported the lights of the "Strathalbyn"? A. Yes.

Q. Well, how far were you past the "Virginian" when you reported the "Strathalbyn's" lights?

A. About—I guess we had passed the "Virginian" for nearly five minutes.

Q. Before you saw the "Strathalbyn's" lights at all? A. Before I reported them, yes, sir.

Q. At that time the "Strathalbyn" was about a mile away, was she?

A. Yes, sir, she seemed to be about a mile away.

Q. And then you changed your course, made off more to starboard, did you?

A. Yes, sir, that is what I can see, that is the way it looked to me. I stood on the bow and I could see we was—I could see what he was going.

Q. And you kept on that course, did you, until he passed the "Strathalbyn"?

MR. HAYDEN: I think this has been gone into about enough on re-direct. I object to it on the ground that it has all been gone into and not proper re-direct.

Q. (Mr. Bogle) I say, did he stay on that course, bearing to the starboard, until after he had passed the "Strathalbyn"?

A. Yes, sir, until he got out—yes, until after we passed the "Strathalbyn."

Q. And he started on that course bearing to starboard, you say, when he was about a mile away from the "Strathalbyn"?

MR. HAYDEN: I object to that.

A. Yes, sir.

MR. HAYDEN: That is what he said. What is the use going all over it again?

MR. BOGLE: Well, I will go over it. You can get your objection in.

Q. (Mr. Bogle) Now, Mr. Ashurst, do you know, as a matter of fact, whether he changed his couse or what changes in course he made?

MR. HAYDEN: I object to that. The witness has just testified what he knows about the change in the course. It is not proper re-direct examination.

Q. (Mr. Bogle) Is that the way it appeared to you?

A. Well, he seemed to change the course, from what I could see, about—he started about a mile before we got to the "Strathalbyn," he started to veer off to starboard.

Q. Would the man at the wheel know more about the changes in course than you would?

MR. HAYDEN: I object to that as immaterial and not proper re-direct examination.

A. Yes, sir.

Q. (Mr. Bogle) Were there any young men up on the bow of the "Flyer" in the vicinity of where you were standing, talking to you?

A. There was no one talked to me at all.

(Witness excused.)

(Filed May 26, 1914.)

CLARK W. SPRAGUE, produced as a witness on behalf of RESPONDENT, CLAIMANT and CROSS-LIBELANT, in SUR-REBUTTAL, and having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (Mr. Bogle) What is your full name, captain?

A. Clark W. Sprague.

Q. How old are you, captain? A. Fifty-five.

Q. Where do you reside,—in Seattle, do you?

A. That is my home at the present time, yes, sir.

Q. What is your business? A. Steamboat man.

Q. How long have you been in that business?

A. I am ashamed to say. Thirty-five years.

Q. Do you hold master's papers? A. Yes, sir.

Q. How long have you held master's papers?

A. Twenty-nine years, continuous.

Q. Do you hold pilot papers for the inland waters of Puget Sound? A. Yes, sir.

Q. How long have you held those papers, captain?

A. Eighteen years, without any intermission.

Q. At the present time are you engaged in the business of a pilot? A. Yes, sir.

Q. What lines do you act as pilot for?

A. Well, the regular line is the Nippon Yusen Kaisha, Japanese Steamship Company, connected with the Great Northern Railway.

Q. Do you pilot any other vessels?

A. Whenever my time permits and the opportunity offers.

Q. Where do you pilot these vessels to and from?

A. The regular line?

Q. Yes.

A. From Victoria here and around various ports in the Sound, for cargo, and back to Victoria.

Q. During such times you are in charge of the navigation of the vessels, are you?

A. To a great degree, yes, sir. I always bear in mind the captain is supreme on a ship.

Q. I mean as to the local or inland navigation?

A. Yes.

Q. You have charge of the navigation of the ship?

A. Yes, sir.

MR. HAYDEN: Let him testify, please; don't tell him what he has got to say here.

MR. BOGLE: Surely you have no objection to a question of this kind.

MR. HAYDEN: I have an objection to your telling him what his duties are. Let him testify to what they are.

Q. (Mr. Bogle) What are your duties as a pilot on the inland waters?

A. Pilot. Direct the course of the vessel from point to point or port to port.

Q. Captain, I want to ask you a hypothetical question, as an expert navigator: Supposing that a vessel called the "Virginian," while on a voyage from Seattle to Tacoma, with a small amount of cargo, approximately 2,000 tons—and her full capacity is 12,000 tons—was in charge of a licensed pilot, a master and third officer, and while proceeding on such a voyage with the licensed pilot on the bridge and the third officer on the bridge and the lookout in the extreme forward part of the ship, she should pass Pully Point about three-quarters of a mile off, and that while off Pully Point she in turn is passed by another vessel called the "Flyer," being a small Sound vessel, which comes up under her stern and passes over to her starboard side, gives her a passing whistle of one blast, which she answers, and proceeds on ahead of the vessel called the "Virginian," having greater speed, and that when somewhere from three to 400 feet or such a matter ahead of the "Virginian" and off the "Virginian's" starboard bow, say a point and a half, that the officers in charge of the "Virginian" hear a single blast of a whistle at some point ahead, which is

answered by a similar whistle by the "Flyer," and that at this time the vessel called the "Virginian" is on a course approximately southeast by half south so as to pass clear of Robinson, and that upon hearing this single blast from ahead, which was answered by the "Flyer," the licensed pilot and third officer endeavor to pick up some object ahead, keeping a careful lookout, but are unable to see any object ahead from which this whistle has been blown, and that the lookout has not reported any light or any vessel ahead, and that approximately two minutes after this first whistle is given, which is answered by the "Flyer," during which time the officers are keeing such lookout and have been unable to see any light or any object ahead, another single blast of a whistle is heard at some point ahead; what would you say, as an expert navigator, would have been the duty of the officers in charge of the steamer called the "Virginian," under such circumstances, with reference to navigating their vessel?

MR. HAYDEN: I wish to object to the question on the ground that it does not fairly state the evidence in the case.

A. Had I been on the "Virginian," in conditions that are given to me here, the first whistle coming from an unknown origin——

MR. HAYDEN (Interrupting) Just a half a minute, please. I don't think that you have got to make this a personal matter, captain. You are asked a hypothetical question and not what you would have done, but what proper navigation should have called for.

A. Well——

Q. (Mr. Bogle) I take it what you would have done is what proper navigation would have called for.

A. I was leading up to that. Maybe I was wrong in putting myself on the "Virginian's" deck. Say any vessel, if I was in that position, a sound of a vessel originating from an unknown source, the first would put me on the alert; if a second blast from a second source of origin unknown, I think I would have stopped my ship, killed her way. I would not change the course of the ship; I could not talk to that that I didn't know the existence of; I would have to hold my ship killed and wait

for further development. It would take some guiding feature to make me change from that proceeding.

Q. (Mr. Bogle) Say, captain, that after this second whistle had been heard, being the first whistle after the whistle which had been blown to and answered by the "Flyer," that the pilot and third officer of the "Virginian," with the aid of the naked eye and with the aid of the night glasses continued to use every effort to pick up some object ahead; that the lookout had not up to this time reported any object or any lights; after consuming a short space of time in making further observations, then what would have been the proper navigation on board this vessel, provided her engines had been stopped at the first whistle to her—which she took to be to her?

MR. HAYDEN: Same objection.

A. Well, I as near as possible would kill her way and stop, stand, hold my position. I might have to manipulate with my engines to hold my head, but I would be very careful—very eager to get that result.

Q. And in getting that result of killing your headway, what would you do, captain

A. I would have to wait until the developments occurred to guide me——

Q. (Interrupting) No, I don't think you got the question. I said, in killing your headway, what would you do aboard the ship in order to do that?

A. I would wait for this unknown origin to declare its position.

Q. I don't think you have got it yet, captain. I mean, what would you do in reference to your engines in order to clear your headway?

A. Full speed astern until the back water came up under the bridge, and then the ship is dead.

Q. And after that what would you do, captain?

A. Let her set; be governed by future conditions.

Q. Would you consider that it would have been proper for you to have in any way changed your course after hearing this whistle? A. No.

Q. Not being able to see any lights?

A. No. If I am the man that his conversation is directed towards, he blows one whistle, he must know or

announce that he has the condition under control.

Q. What would the evidence indicate to you, that he was blowing to you?

A. I don't know that—there is nothing that would indicate it, only that I am getting in close proximity to some craft, at least the sound of the whistle would indicate that, and I stop my vessel, kill her, absolutely stop her, until something is put before my vision that would govern my action.

Q. Would the fact that this other vessel had blown you one or more passing whistles indicate to you that she could or could not see you?

A. How do I know that he blew to me? I don't know that. I am in ignorance. The only knowledge that I have got is that I am in close proximity to some vessel. Ordinary caution would bring my vessel to a full stop.

Q. Now, captain, take another position and say that a vessel, called the "Strathalbyn," heavily loaded with a heavy cargo of lumber, a deck load on the forward deck and a deck load on her after deck, while on a voyage from the port of Tacoma—I should have said, in both these questions, captain, that it was—take the position that it was after dark; in saying that no lights were seen, of course you would have to assume that.

A. Yes.

Q. That it was after dark, along about between seven and eight o'clock, in the month of January. Say that you were on a vessel called the "Strathalbyn," loaded as I have stated, with a slight list of about six degrees to the starboard, making approximately six knots an hour, on a voyage from Tacoma up the Straits, bound for Australia; that she rounded Robinson Point about a quarter of a mile off, somewhere between 7:30 and 7:40 p. m., on a clear dark night, overcast; that upon rounding Robinson Point the officers in charge of the "Strathalbyn" saw the lights of two steamers, apparently abreast of Pully Point, ahead of him; that they saw and noticed the ship on the inside, which afterwards turned out to be the steamer "Flyer," disappear—the lights disappear and then she reappeared on the other or starboard side of the other vessel, whose lights they had

seen, which afterwards turned out to be the "Virginian," and gradually drew ahead of such other vessel, the "Virginian"; that when the ship called the "Flyer" was approximately a quarter to a half a mile ahead and from a quarter to three-quarters of a point off of the "Strathalbyn's" port bow, or some such distance slightly off of her port bow, that the officers on the "Strathalbyn" blew to the "Flyer" one blast of her whistle, which was answered by the "Flyer." Well, going back for a minute: That when the officers on the "Strathalbyn" saw these two vessels abreast of Pully Point, that they heard the two vessels exchange passing whistles, one vessel and the other one answered; that at the time the ship called the "Strathalbyn" blew a single blast of passing whistle to the "Flyer," that the other ship, the "Virginian," was directly head-on to the "Strathalbyn," both of her side lights being visible and her range lights being in line; that the "Strathalbyn" proceeded on her course for approximately two minutes, until she was nearly abeam of the ship called the "Flyer," which she had blown to some two minutes before, and was from a quarter to a half a mile off, and that at this time the lights of the ship "Virginian" bore in the same way, showing that she was directly head-on to the "Strathalbyn," and that at this time, when the "Strathalbyn" was abeam of the "Flyer," that she gave one passing whistle to the "Virginian" and gave the order to port; that after giving this one whistle to the "Virginian," she waited and received no response. Under such circumstances, captain, what would have been the proper navigation on the part of the ship called the "Strathalbyn"?

MR. HAYDEN: Same objection.

A. I would port my helm hard over and probably stop my engines.

Q. Port your helm hard over and stop your engines?

A. I would. If I was in close waters that would not permit of a circle, I might back my engine full speed, which would have a tendency to expose greater than my helm alone would give; in going full speed astern with a single screw vessel, I would have more power applied to expose my port side.

Q. Say that the "Strathalbyn," after blowing the one whistle to the "Virginian" which was not answered, having ported, waited approximately one minute, during which time the "Virginian" bore the same, both of her side lights being visible and her range lights being in line, and that at this time the "Strathalbyn" gave her a second passing whistle of one blast——

A. (Interrupting) Yes.

Q. (Continuing) —which was not answered?

A. If I had come up to that,—I had not ported my helm hard over on the first blast, but on the second, when I saw there was no recognition of my whistle from the "Strathalbyn" to this approaching ship—on the second opportunity or necessity of blowing the passing whistle then I would put my helm hard over; I would not have done it in the first instance; I would have ported my helm a little, but not hard over. When I saw my approaching vessel didn't give way to me—didn't understand—if he did, he was not willing to comply—on the necessity of a second whistle then I would put my helm hard over.

Q. Well, say that at the second whistle to the "Virginian," which had not been answered, that the helm was steadied—ported and then steadied—that no response was received, and that then it was noticed that the red light on the "Virginian" was becoming dimmer and that her range lights were opening slightly——

A. (Interrupting) Yes.

Q. (Continuing) —what would you have done under such circumstances as that?

MR. HAYDEN: Same objection, and immaterial.

A. If I had my helm hard aport then I would, on the second whistle—the necessity of the second whistle, I would have gone full speed ahead, to have made this circle, and with all possible haste.

Q. (Mr. Bogle) After noticing such apparent change in the course of the "Virginian," would you have given her any signals?

MR. HAYDEN: Same objection.

A. From the "Strathalbyn"?

Q. (Mr. Bogle) Yes. A. Yes, I would.

Q. (Mr. Bogle) What signal would you have given her then?

A. I would have blown—the condition of my engines—three whistles and then probably followed it with four.

Q. What would the four whistles indicate?

A. Danger.

Q. Captain, where the "Strathalbyn" was then proceeding under a port helm and noticed the red light disappearing and the green light getting brighter and the range lights opening up, would that indicate that she was changing her course? A. That she was changing.

Q. The "Virginian" was changing? A. Yes, sir.

Q. In what direction?

A. Instead of passing me to port, a tendency to cross my bow, or at least fall into the course that I will take with the port helm.

Q. Would that indicate any danger to you if you had been on the "Strathalbyn"?

A. Yes, because he is coming towards me, he is approaching me, he has got a bigger target, he has got the full length of the ship as a target, if I make my circle and he continues to hide his red light and show his green.

Q. Say that you hadn't done any of these things, captain, but had stopped your engines at the second whistle? A. On the "Strathalbyn"?

Q. Second whistle on the "Strathalbyn," and had noticed this vessel apparently changing her course so as to cross the course that you had taken and had waited and noticed that the red light was entirely shut out and that her range lights were opening broad—

A. (Interrupting) The green light in sight?

Q. The green light in sight and the vessels approximately 1500 feet apart, what would you have done?

A. Well, the only thing I can do with my helm hard over, to make my circle small and get out of the line of the travel of this approaching vessel, is to go full speed ahead then.

Q. Would you have given any signal then if you hadn't given the danger signal or backing signal before?

A. Yes, I on the "Strathalbyn" would blow—when I got no reply or answer, I would blow an alarm whistle, if I felt alarmed, and I would—if I see two lights coming to me that way, the red light obscured and the green light broad and the range lights opening, I am helpless, I am in irons; the only alternative I have is to full speed ahead with the helm hard aport all this time. The greater velocity of water passing the rudder necessitates the vessel passing in a smaller radius than she will dead or under slow bell.

Q. Do you think it would have been necessary for you to indicate your position to the other vessel if you considered there was any danger at that time?

A. I certainly would. If I was on the "Strathalbyn," I would have made lots of notes. I would figure that I had exhausted all my ability and resources to avoid what appeared to be a collision, and then I would try to arouse assistance from my foe.

Q. Captain, taking the entire situation as I have detailed it to you, when would you have considered it necessary or proper for you to have blown the danger signal?

MR. HAYDEN: Same objection.

A. Well, I certainly would not have found any necessity to do it on the first whistle—passing signal. I would think I would be brought to a sense of interest when it was necessary to blow the second passing whistle, to have put my helm hard aport and full speed astern, blown my danger signal, indicated first that my engines were going astern and then blownig a danger signal, and if up to that time no reply, I would put my engines full speed ahead in order to accomplish what I was after, getting out of the track of this oncoming vessel.

Q. This is after the second whistle now?

A. This is after the second whistle.

Q. Which hadn't been answered. You would have put your engines—you say you would have gone full speed ahead if you had received no response to your danger signal?

A. Yes, because I must accomplish what I am after in a short space of time, I have got a big heavy chunk of a vessel, it don't move rapidly at best, but they will

swing quick with the helm hard over with the speed checked and then full speed ahead. You get the action on your rudder.

Q. Captain, what would the fact that you had blown passing whistles to an approaching vessel which was perfectly visible to you—all of the lights visible, and that she hadn't answered your passing whistles, indicate to you?

A. Well, I don't know what my first charge would be to the approaching ship; I don't know whether on my first thought I would take it something defective in my own craft or neglect on the approaching craft.

Q. I mean——

A. (Interrupting) I did at all times see this approaching vessel with her lights in sight, and had seen them for some minutes before even conversation opened with the "Flyer," as you give it to me.

Q. Well, with the further fact in your mind that you had heard this other vessel answer the "Flyer's" signal, would that indicate to you that she saw you or your lights, or not?

A. I could not say. It would indicate that he was —some one was on watch to answer the passing vessel, which was the "Flyer" passing the "Virginian," and when I blew to him and he didn't answer, and I blew again and got no reply, I understand, I seeing and having in my mind a proper observation of the exact position of the approaching vessel, it seems it would be left for me to "carry the baggage."

MR. BOGLE: That is all.

A. The laws of our steamboat work endeavor to make it impossible, if the law is complied with, to have a collision, and it is so, if both understand the situation; but the last resort that we have got, if we must collide, get hit under the red light—of two evils take the least. That is as I understand steamboat law. I have been pretty fortunate myself; I have had no trouble; no guarantee, though, that I won't have; but I will turn around and run away any time to avoid it.

CROSS-EXAMINATION.

Q. (Mr. Hayden) Captain, you are testifying now about a situation that you did not see, aren't you?

A. No, I didn't see it. I was somewhere away on the water here, handling another vessel at the time.

Q. And of course the matter of distances and how far you were off would make some difference in the idea of danger that might occur to you or anybody else, as to giving signals from a steamer, wouldn't it?

A. Well, different people have different vision. One light might appear very close and a very large area to one eye and not another, and it is only an approximation at best.

Q. The matter of distance——

A. (Interrupting) I don't know whether you mean on the land or whether you mean an approaching vessel.

Q. I am talking about ships right now. The matter of distance on the water is a matter that the pilot has to judge of when he is approaching another vessel, is it not? A. Yes.

Q. And if the pilot upon a vessel judges that the distance is sufficiently great for the ship ahead to rectify any particular error that may be made, he is perfectly justified in giving him a whistle to indicate the passing course of the vessel that is coming toward that ship that is making an apparent error, is he not?

A. Well, I am coming along down the Sound——

Q. (Interruptnig) Answer my question, captain.

A. Let me do it so that I can do it intelligently.

Q. Do you understand my question?

A. No, I don't think I do.

(Question read.)

A. I can't say. I am not the judge whether my approaching ship is making any error or not.

Q. How far apart, captain, do you think it is necessary, when you are meeting a ship practically head-on, if the two vessels see each other, for them to miss a collision by each porting their helm upon the exchange of signals?

A. Well, circumstances would change the distance applied.

Q. Considering ships of the size of the "Strathalbyn" and "Virginian," as has been described to you?

A. I understand this night there was no wind.

Q. Practically none.

A. Yes. Well, I usually like to open conversation two miles and a half or three miles away, two miles and a half with a good—well, ocean-going ship, good substantial whistle, and invariably endeavor to open conversation first if I have a fair wind, because my sound penetrates further than the other fellow's could possibly, either night or day.

Q. You would not say that in attempting to open conversation a mile and a half away or a mile away was anything out of the way, would you?

A. Well, Mr. Hayden, I would be governed by the power of my whistle. If it was a defective whistle, low in power——

Q. (Interrupting) I mean two ships of the size of the "Strathalbyn" and "Virginian" are far enough away when they are a mile away, if they are approaching each other nearly and on, to miss each other if they understand the signals at that distance, aren't they?

A. They both want to be on the alert to do it.

Q. You think it takes a mile, do you, for two ships the size of the "Strathalbyn" and "Virginian" to veer far enough in response to signals to miss each other?

A. Everything wants to work in good shape to be sure.

Q. If both of them act under those circumstances as they should act, do you think there is any danger of collisions when the whistles are exchanged a mile away?

A. No, not if they are answered.

Q. How big are these boats, the Nippon Yusen boats, how long are they?

A. The longest ships that are in the line are 470 feet long.

Q. 470?

A. The regular ships. They have two, however, that are not so long.

Q. In going ahead with those ships, how much distance do you require to make a variation, that is, forward distance do you require to make a variation, a clearance of say fifty feet?

A. Fifty feet is pretty close waters, Mr. Hayden, in a ship of that length.

Q. I am asking a question, though, captain. How

much distance, going forward, do you need to change the course of your vessel fifty feet?

A. If I am working full speed ahead, a twin screw ship, I think I can swing her, veer her bow a distance of 50 feet in the length of the ship.

Q. Are the Nippon Yusen ships twin screw ships?

A. Yes, sir.

Q. Did you ever have to blow twice to a ship as you were approaching her, for them to understand the signals? A. Yes, sir.

Q. Have you ever had to blow three times?

A. A passing signal?

Q. Yes. A. No, I can't say that I have.

Q. You never have.

A. And have passed vessels, Mr. Hayden, that didn't answer me up to this time.

Q. I guess you have too. A. Yes.

Q. The fact of the matter is that is not an extremely unusual occurrence, is it?

MR. BOGLE: Oh, I object to that.

Q. (Mr. Hayden) How?

A. Well——

MR. HAYDEN: (Interrupting) What is the objection to that?

MR. BOGLE: I object to that as being immaterial.

MR. HAYDEN: All right.

Q. (Mr. Hayden) What do you say, captain?

A. I don't know that I could relate the circumstance, that brought about this mute condition of this vessel that I speak of, but her course was not mine, she was coming out of Seattle, the instance I speak of, and he ultimately went across and went through the west passage, but when he was coming around Alki Point or passing Alki Point, crossing my course, I blew one whistle to pass to port and he didn't answer me and he didn't turn to take the course.

Q. Was that at night time?

A. No, it was in the evening before lights were set.

Q. You understand, do you, captain, that when one whistle is given each ship is supposed to port her helm and go to starboard.

A. The man that blows his whistle should port his helm.

Q. Should not each ship go to starboard?

A. Depends upon whether it is understood or seen.

Q. Isn't it a navigation rule that when a port whistle is given, that each ship shall port the helm and go to starboard?

A. Yes, if you see that approaching vessel.

Q. That is the rule that is thoroughly fixed and settled in the mind of all navigators, is it not? A. No.

Q. It is a rule that should be thoroughly fixed in the mind of all navigators?

A. Yes, if the vessels each understand the action of the other and are in a position to be seen, act.

Q. Now then, when you hear two whistles from a boat ahead, the rule is for each vessel to go to port, is it not? A. Two whistles ahead?

Q. Yes. A. Starboard your helm to pass.

Q. You go to port?

A. You expose your starboard side. The vessel veers to port.

Q. That is the rule that should be known by all navigators, is it not? A. No.

Q. They should not know that?

A. They know that if they know who they are talking to.

Q. Yes. When a vessel hears one whistle from a point ahead, do you wish to be understood as meaning that that vessel does not know that the signal is a port passing signal?

MR. BOGLE: I object to the question. The rules show what the signal means.

(Question read.)

A. Yes, it is a port passing signal, but if——

Q. (Interrupting) Now——

A. (Continuing) —but I must see the origin of that noise, either by the lights or the form of the vessel.

Q. You don't know, unless you see the vessel, that the vessel ahead wants to go to port, do you?

A. I don't know that he is talking with me.

Q. Don't know that? A. No, sir.

Q. If you do know that he is talking with you, then

you know that the intention is to go to port, do you?

A. Yes, and it is me to answer the whistle that is directed toward me and port my helm. I must know the location of this approaching vessel in order to comply with his talk or conversation.

Q. If you know that a vessel is ahead of you and that she has blown you one whistle, don't you know that it is safer for you to put the vessel's head to starboard than it is to do anything else?

MR. BOGLE: I object to that. The witness has just testified to that directly to the contrary.

MR. HAYDEN: I object to that information-conveying objection of counsel.

MR. BOGLE: Surely the witness knows what he has testified to, and that very question was asked him. I object to the form of the question.

MR. HAYDEN: I am cross-examining. I do not think the question is out of the way.

A. If I know this vessel that is—or this whistle that is heard is for me, it is my duty to act. If I don't see the form of the ship nor the lights that are carried to designate his locality or position, I can't answer him.

Q. You cannot answer him with a whistle?

A. No, sir.

Q. Suppose you were on a vessel under the circumstances where another steamer had passed you on your starboard side and had gotten half or three-quarters of a mile ahead and you heard port passing signals exchanged between that steamer, the first whistle being blown by—between those steamers, the first whistle being blown by a vessel which you knew was not the vessel that had passed you or overtaken you and passed you—

A. (Interrupting) Yes.

Q. (Continuing) —and you had heard an answer——

A. (Interrupting) Yes.

Q. (Continuing) —to that whistle, you would then know that the two vessels were passing each other port and port, wouldn't you?

A. Yes, but I still might be in doubt as to the duplicating of the whistle, whether it was misunderstood by either of the approaching vessels ahead of me.

Q. Now then the next thing that you would hear would be one whistle? A. Yes.

Q. From this same steamer that had first blown to the vessel that had overtaken you? A. Yes.

Q. And you heard no whistle at all from the vessel that had overtaken you, in answer——

A. (Interrupting) Yes.

Q. (Continuing) —to that whistle. You then would know that the vessel that had overtaken you and passed was not in a position where it was necessary to answer the other whistle, would you not?

A. I don't just get that, Mr. Hayden.

(Question read.)

A. Well, I don't know that I would know it.

Q. That is what you would surmise, though, under those circumstances, would you not?

A. I can't tell. I would know that there was more than one craft——

Q. (Interrupting) Just suppose for the——

MR. BOGLE: (Interrupting) Let him answer. Go ahead, answer the question.

MR. HAYDEN: I am asking him a question.

MR. BOGLE: Let him answer your questions. Be fair to the witness.

MR. HAYDEN: I am trying to be.

MR. BOGLE: What were you going to say, captain?

Q. (Mr. Hayden) Didn't you answer that question, captain?

A. Well, you asked me, as I understood it, Mr. Hayden, that this fellow that had passed—that had overtaken me and passed—passing me and I answering him, and then, ahead of me, he opens communication with some other craft.

Q. The other craft opens communication with him?

A. Yes.

Q. And he answers?

A. Yes. I would take it for granted that there was more than one vessel ahead of me and not both going in the same direction, but I can't act to this on-coming ship until I know his position.

Q. I see, all right. Now then this on-coming ship

you know is coming toward you. Now you are——

A. (Interrupting) No, I don't know it, Mr. Hayden.

Q. You state they are not coming in the same direction—you know these vessels were not going in the same direction? A. Yes.

Q. In other words, that the "Flyer" was not overtaking the vessel that had blown to the "Flyer"?

A. No, I don't know that.

Q. Well, what do you mean by not going in the same direction?

A. Well, I don't know that I can substantiate my answer on that, either.

Q. Oh.

A. Now, here is one whistle that is applicable in one position as much as the other, one as good as the other; I can't say that I should say that this other vessel —the "Flyer" may have been passing the second vessel going in the same direction that I was. He passed me with one whistle and overtakes this vessel ahead of me and passes him with one whistle. It does not indicate that he is coming in opposite direction.

Q. Then you want to change your answer, do you?

A. Yes, I do.

Q. And it don't indicate anything, then?

A. It indicates that there is a craft ahead.

Q. That is all it indicates? A. Yes, sir.

Q. Now then suppose you hear, a minute or two afterwards, another whistle from, we will say the "Strathalbyn," to distinguish these vessels, meaning the vessel coming this way——

(Interrupting) Yes, sir.

Q. And no answer from the "Flyer"? A. Yes.

Q. Does that indicate anything to you?

A. Yes, sir, it does, it indicates that there is a craft.

Q. Is that all? A. Its position I can't ascertain.

Q. Does it indicate anything else?

A. It does to his observation and his hearing.

Q. Does it to you? A. No.

Q. Does that indicate that any vessel is signalling to another vessel?

A. Yes, or that is—yes, it should so be classed.

Q. So be classed? A. Yes.

Q. And does it indicate that that vessel is signaling for a port passing?

A. I presume it so could and should be taken, to some craft the whereabouts of which he knows.

Q. And you on the "Virginian" in that time, that is, the time you hear this second whistle from the craft coming—from the "Strathalbyn," say, would do what?

A. To me on the "Virginian" or to the master of the "Virginian," or pilot?

Q. Yes. A. Or pilot?

Q. Yes. A. Stop his ship.

Q. Anything else?

A. Full speed astern; kill his ship.

Q. He would stop and put full speed astern, on the second whistle? A. Yes, sir, I think I would.

MR. BOGLE: Which second whistle are you talking about?

Q. (Mr. Hayden) The second whistle that you heard from this boat ahead?

A. The unknown origin, yes.

Q. Let's get it straight, captain. You hear the—say "Strathalbyn"—make it specific——

A. Yes.

Q. (Continuing) —blow one whistle to the "Flyer"? A. Yes.

Q. And you hear the "Flyer" answer one whistle?

A. Yes.

Q. Then you hear the "Strathalbyn" blow another whistle, which is the second whistle of the "Strathalbyn"? A. Yes.

Q. On that whistle was the one you would stop your ship and reverse? A. No, I don't think I would.

Q. You would not; then what would you do?

A. I understood this was the second whistle that the "Strathalbyn" had blown, without any reply from the "Flyer."

MR. BOGLE: From the "Virginian."

A. No, the "Strathalbyn" was talking yet with the Flyer."

MR. BOGLE: Yes.

Q. (Mr. Hayden) Let's get it straight, let's go

back again so that we don't have any misunderstanding. You hear the "Strathalbyn" blow one whistle——

A. (Interrupting) Passing the "Flyer," yes.

Q. (Continuing) —and then you hear the "Flyer" blow a whistle—— A. Yes.

Q. (Continuing) —and then you know there are two ships off there? A. Two craft, the same.

Q. Two craft off there? A. Yes.

Q. And they are whistling to pass each other?

A. Yes, sir.

Q. You hear another whistle, which is the second whistle from the "Strathalbyn"? A. Yes.

Q. You hear no answer from the "Flyer"?

A. Yes.

Q. On the "Virginian" what would you do?

A. I don't think that would more than put me on the alert, when there was one naked whistle blown.

Q. What would you do?

A. I would be on the alert and certainly search for craft.

Q. Would you do anything else?

A. I would—not at the moment I would not. I might stop.

Q. You might?

A. If he blew again and no answer from the——

Q. (Interrupting) I am going to come to that so that we won't get mixed up. Is that all you would do, I mean just be on the alert or might stop?

A. I might stop. I would hold my boat's course.

Q. You would hold your boat's course? A. Yes.

Q. Be on the alert? A. Yes.

Q. And might stop? A. Stop the engine.

Q. Anything else?

A. Not at the moment. The next——

Q. (Interrupting) The third whistle from the "Strathalbyn"?

A. I would full speed astern, kill my ship and hold my head.

Q. You would full speed astern, kill your ship and hold your head? A. Yes, sir, endeavor to.

Q. You would not swing over to port, would you?

A. No, I would not. I would hold my position.

Q. And why would you kill your ship?

A. Because I am coming in close proximity to some unestablished noise, I would be in doubt as to the position of this vessel, of this noise-maker——

Q. All right. You say you would kill your ship?

A. Yes, sir.

Q. That is, on the third whistle, and you would hold your course? A. Endeavor to.

Q. Would you be in doubt about the other ship at that time?

A. I certainly would be in extreme doubt.

Q. And then what would you do, if you were in doubt?

A. I should kill my ship. There is nothing to do but await developments.

Q. Wouldn't you blow danger signals if you were in doubt? A. No, I don't think I would.

Q. Don't the rules require that when you are in doubt of the course or direction of another ship, that you shall blow danger signals?

A. If you know you are in danger.

Q. But it does not say that, does it—if you know you are in danger—it says when you are in doubt of the course and direction of another ship, you should blow your whistles, doesn't it?

MR. BOGLE: I object. The rules are the best evidence.

A. I don't blow a danger signal until the impulse hits me that such is the case.

Q. Until you are in doubt, you say?

A. But, to give myself the benefit of the doubt, I kill my boat, stop my ship and she is stationary; hold my boat's course as long as possible and wait for developments.

Q. I want to know if you are in doubt of the course and direction of a ship, if you, as a navigator, would blow danger signals?

A. I can't blow a danger signal until it occurs to me that danger exists.

Q. When you are in doubt as to the course and direction of a ship, would you blow danger signals?

A. Of my ship?

Q. Of the ship that is off somewhere, you don't know her course and you don't know her direction——

A. (Interrupting) No.

Q. (Continuing) —you are in doubt of her course and direction—— A. Yes.

Q. (Continuing) —would you blow danger signals then? A. No.

Q. All right, that is what I wanted you to say.

A. No. I am listening then, hungry to absorb something to guide me right if I am wrong. Prudence would bid me to stop my ship, to be in a position——

Q. (Interrupting) You have answered that, now, captain. Let me ask you a question a minute here. If you were on the bridge of the "Virginian" and you heard a whistle ahead and could not see anything, would you be in doubt as to the course and direction of the ship ahead of you? A. I certainly would.

Q. Captain, what does one whistle mean?

A. Well, it depends upon how it is applied—in the fog one thing and in clear weather another.

Q. What does one passing whistle mean—not a fog signal, a passing whistle?

A. When the vessels can be seen, either by lights or form of vessel, it means pass to port, and both the same——

Q. (Interrupting) Does it mean anything else?

A. It would signify that there was a vessel somewhere in hearing distance.

Q. I don't mean as far as vessels are concerned. I mean as far as the movement of ships is concerned.

A. Well, I might answer that, give a command to a mute——

Q. (Interrupting) No, I am talking about the movement of ships. Does one whistle or signal mean anything more than simply you are going to pass to port?

A. Well, as I interpret the law, one whistle means that I am approaching a vessel and have signified a desire, both from desire and from law, to pass to port.

Q. Is that all that you know that one whistle means? A. I can't answer a whistle——

Q. (Interrupting) I am not asking you about you answering it, I am asking what it means.

A. That is what it means when there are two vessels in proximity, the position of each known by the other.

Q. Does it mean anything else, to your knowledge?

A. Well, that is the established signal, pass to port, one whistle, but it is——

Q. (Interrupting) Under no other circumstances except to pass to port do you know that the one whistle would be used?

A. Yes, the man that blows the one whistle to pass to port evidently knows the line of conversation that he is using and it is up to him to abide by what he has tried to establish.

Q. And if the other steamer makes any manoeuver which prevents that, the other steamer is in the wrong for doing it, isn't she?

A. If the man who opens the conversation crosses his effort, he is in error.

MR. HAYDEN: Well, now, go back and read my question. I want an answer.

(Question read.)

A. No, she is not, because he is in ignorance, he does not do anything other than use common application of sense to kill his vessel to avoid getting closer to that that appears to be by him or close to him.

Q. If you get a port signal—passing signal from a vessel ahead and you don't see it and you swing your vessel over so her head goes to port, are you doing right or wrong?

A. Well, different conditions of the engines or rudder might bring that result.

Q. Can you answer whether you are doing right or wrong?

MR. BOGLE: He has answered it as near as a man can.

A. If I have fair knowledge of this approaching vessel and I starboard my helm against his one whistle and obscure my red light and expose my green, I have done wrong, but I have got to know where my foe is, or

my associate, or my co-worker, whatever you might class it.

Q. If you are not in sight of the other vessel and you hear one whistle from ahead——

A. (Interrupting) Yes.

Q. (Continuing) —would you say it was good navigation to turn your vessel's head to port?

A. With a starboard helm?

Q. With a starboard helm.

A. Veer, expose the starboard side?

Q. Yes.

A. I can't say that that would be faulty, because I am using all appliances in the ship and kill my way and she might veer one way or the other in doing that, whether that was accomplished by the helm or by the engine.

Q. Suppose the ship backs straight when you back her? A. As a rule they don't.

Q. I am supposing she does and I want you to suppose so. A. Yes.

Q. Would it be good navigation to turn such a ship's head over to port after you had got a passing signal from another vessel?

A. No, it would not be a good occurrence, but it might be a feature beyond my control.

Q. Now, captain, we have been all the time talking about this—I don't know whether you understand that the assumption is that this whistle that is heard is heard from a point ahead; you understand that is the assumption, don't you?

A. Yes. Yes, that should be granted and is the condition because——

Q. (Interrupting) That is the condtiion.

A. (Continuing) —some noises have been heard in passing, in meeting a boat prior to our close proximity.

Q. Now, the lights on the "Flyer" of course are perfectly visible? A. Seems to be.

Q. We will assume that? A. Yes.

Q. She is seen from the bridge of the "Virginian"?

A. Yes.

Q. Going to Tacoma? A. Yes, sir.

Q. If the "Virginian" would take the course of the "Flyer," there would not be any question whatever about

passing this other vessel which was blowing one whistle, would there?

A. Well, if they were absolutely in the same—so to speak—groove, there would not be no danger, no; but they were not.

Q. And there would be less danger when the vessel ahead, the "Strathalbyn," was blowing one whistle, if the "Virginian" would attempt to go in the same direction that she saw the "Flyer" successfully passing the other vessel, would there not?

A. Yes, but not ordinarily taken following one vessel; he is not the guiding vessel to me on a ship—any vessel that overtakes me and passes me, certainly not, unless he has a deeper ship and I am in narrow, confined waters.

Q. I appreciate you do not follow around the couse of a vessel, but under the circumstances here, this vessel ahead was a vessel that was exchanging whistles successfully with another vessel; it is under those circumstances that I ask you if she would not, by going over to where the "Flyer" had made this successful exchange of whistles—would not have been in a safer position?

A. Would have been in a safer position, providing the other fellow was not cutting across the two invisible canyons, channels, or grooves, that these ships were moving in.

Q. He would not get one whistle under those circumstances, from ahead, would he?

A. Well, I must take your own admittance—admission that he does not know the location of this approaching ship.

Q. But he has heard it from ahead. Everything in this case, captain, is on the assumption that the "Virginian" hears this whistle from ahead. A. Yes.

MR. BOGLE: Some point ahead.

A. Yes, and you have got six or eight points to yet be in the classification of meeting a vessel ahead.

Q. (Mr. Hayden) There is not any question in your mind, is there, that the "Flyer" passed this vessel with those whistles, and when they were given and exchanged that both of those vessels knew where they were, where

each other was, that is, the "Flyer" and the "Strathalbyn" at that time knew where the other one was?

A. Yes, because the whistles were answered—they were given and answered.

Q. And if the whistles were given and answered, those two vessels must have known where each other was? A. The performance of each other?

Q. Yes, the performance of each other. A. Yes.

Q. Now, assuming that to be the fact, that the "Flyer" knew where the "Strathalbyn" was and the "Strathalbyn" knew where the "Flyer" was—

A. (Interrupting) Yes.

Q. (Continuing) —and they had exchanged port passing whistles—

A. (Interrupting) Yes.

Q. (Continuing) —and you were on the bridge of the "Virginian", could you figure out any situation where it would not be safe for you to go to starboard, on hearing another blast of a whistle from the "Strathalbyn" which was not answered by the "Flyer"?

A. I might have an inclination to port my helm, but I could not with safety do it.

Q. You could not with safety do it?

A. I could not with safety do it. My endeavor would be to hold my course, and, as conditions got warmer, stop my vessel, waiting for something to develop to guide me on the action of my approaching vessel.

Q. Did it ever occur to you, captain, that if the lights happen to be out on a vessel that you are navigating, you might not know it? A. Yes.

Q. And under those circumstances, supposing the lights were out on the "Strathalbyn", wouldn't it have been the business of the "Virginian", when she didn't see them as soon as possible to blow a danger signal?

A. Well, I can't say that it would.

Q. Wouldn't you do it if you were in the "Virginian's" place?

A. No, I would not talk to a person which I could not address my conversation to.

Q. When you hear a whistle ahead and then another whistle ahead and then another whistle ahead?

A. I would stop my ship and kill her.

Q. You would not blow any danger signals to indicate that you could not see that ship ahead? A. No.

Q. To the man who was on her? A. No.

Q. If the man who was on the ship ahead had—

A. (Interrupting) I don't realize a danger which does not exist. So far as my apprehension goes, I can't see this fellow.

Q. What do you stop your ship for then?

A. Because this sound is increasing or getting in closer proximity.

Q. Why do you stop it?

A. I stop myself to give myself the benefit of the doubt, to act and act wisely when I do act.

Q. To give yourself the benefit of the doubt?

A. Yes.

Q. What doubt?

A. That there is some vessel in close proximity. I am ranging along here at a mile every five minutes or twelve miles an hour.

Q. Don't you know that under some circumstances one whistle means that you have got to keep your course and speed?

A. No, it does not, never signifies I have got to keep my speed.

Q. Never does? A. No sir.

Q. Under no circumstances?

A. No sir, not to my steamboat knowledge.

Q. If you receive one whistle from a vessel—

A. (Interrupting) Yes.

Q. (Continuing) —doesn't that indicate to you that you are to keep your course and speed?

A. No, it has nothing to do with any speed.

Q. Under any circumstances?

A. Under no circumstances has it to do with speed. If I know the origin of this whistle, I port my helm and pass.

Q. All right.

A. And to give myself a greater field to ascertain that position, I kill my ship.

Q. I just want now to get a "Yes" or "No" to this question, without any explanation to it, if you can do it.

A. Well, I will try to.

Q. Is there any circumstance in the navigation of a vessel, when you hear one whistle from another vessel, that you are to keep your course and speed?

MR. BOGLE: I object to that. The witness has testified to a hypothetical question—

Q. (Interrupting) Answer "Yes" or "No."

MR. BOGLE: (Continuing) —from the facts as they have been presented to him.

A. Repeat the question.

(Question read.)

A. Does not apply.

Q. (Mr. Hayden) All right. Then I understand there is no such situation.

MR. BOGLE: I object to it as being immaterial in this case. He is only testifying to the situation that has been presented to him.

A. Let me go back over that—

Q. (Mr. Hayden, interrupting) I just want to get an answer, that is all, "Yes" or "No" to that question. You say it don't apply. What do you mean when you say it don't apply, do you mean "No" or "Yes"?

A. In one instance it applies, on a strained case, with an overtaking vessel; other than that it does not.

Q. It does not apply?

A. No. I am at liberty to hold my course and speed when a vessel is overtaking me; he is the approaching steamer and it is him to keep out of my way.

Q. That is the only instance, then?

A. That is the only instance where it applies.

Q. All right.

A. When two vessels are running in the same direction, one at greater speed than the other; it can apply there.

Q. If after you had given—being on the "Strathalbyn" now—if after the pilot on the "Strathalbyn" had given the vessel ahead the port signal which had not been answered, then gave the vessel ahead another port signal which hadn't been answered—

MR. BOGLE: (Interrupting) By port signal do you mean one whistle?

MR. HAYDEN: I mean just that.

MR. BOGLE: One whistle?

MR. HAYDEN: Yes; port passing signal.

MR. BOGLE: I say, you mean one whistle?

MR. HAYDEN: I mean a port passing signal. I think the captain knows what it means.

MR. BOGLE: Well, I want to find out what you mean.

Q. (Continuing) And if he had given another port passing signal, and between the second and the third port passing signal—

A. (Interrupting) This is from the "Strathalbyn"?

Q. From the "Strathalbyn"—he observed that the "Virginian" was swinging to port—

A. (Interrupting) Yes.

Q. (Continuing) —would it have been proper for him to have then given cross signals? A. No sir.

Q. The only thing that the "Strathalbyn" can do under those circumstances would be to continue to swing to port, would it not?

A. Helm hard over and full speed ahead.

Q. And to continue to swing to port, is the question I asked you?

A. Yes, with all of the ability applied, yes.

Q. Now, whether he should go hard ahead or back up would depend on what his judgment told him would be the crossing point on the course of the vessel that was swinging, that is, the "Virginian", and his vessel, under such circumstances, would it not?

A. He has made a declaration of one whistle, and you demand that that is a port passing whistle.

Q. I asked you a question that can be answered by I think "Yes" or "No."

(Question read.)

A. I can't answer that. I don't know what his judgment is or his action at the time. Evidently he didn't do what the law requires him to do.

Q. Under some circumstances, captain, if the "Virginian" were swinging to port and the "Strathalbyn" was swinging to starboard, by going ahead hard and swinging also to starboard on the "Strathalbyn", you might force your vessel right directly across the course that the "Virginian" would be taking by her swinging,

might you not? A. You have got no other alternative.

Q. He could not stop and back her?

A. He could not stop and back her.

Q. Suppose he had concluded that the "Virginian's" course, if the "Virginian" continued to swing, would go across his course far enough ahead to miss him if he backed up, then what would you think the pilot should do?

A. He would help his rudder with going full speed astern, he would check his momentum; but if that didn't occur to him as being—accomplishing what he was endeavoring to do, I would helm hard aport, full speed ahead, to make the circle in the smallest radius possible.

Q. What I want to get at, it is a matter of judgment whether a pilot should go full speed ahead or full speed astern, and that judgment must be determined by the facts, how sharply the approaching vessel is swinging to port and what her speed is? A. Yes.

Q. It has to be determined by that, doesn't it?

A. Well, he is the doctor.

Q. And it is what you would have to do too, wouldn't you, that is what any navigator would do, isn't it, under those circumstances? A. Yes.

Q. When you get into a position of danger, or where you think there is likely to be danger, you have got to use your best judgment, taking all the circumstances into consideration, haven't you?

A. Yes, you have got to act as conditions require, according to your judgment.

Q. And the man who is on the bridge of the "Strathalbyn", who is an experienced and practical navigator, taking into consideration all of the conditions, including the speed of the vessels as they are coming toward each other, and everything else, his judgment is apt to be better than the judgment of a man sitting in a witness chair criticising it, is it not?

MR. BOGLE: I object to that.

A. This is an unpleasant duty for me to be called to pass on any man's good or misdeed—misdeed in particular, or misfortune. I will not say "misdeed", I will say "misfortune".

Q. Well, it probably is, captain, I suppose it is an unpleasant duty. A. The "Strathalbyn"—

Q. (Interrupting) Wait a minute. I asked you a question.

MR. BOGLE: Let him answer.

MR. HAYDEN: I am asking a question here about judgment?

MR. BOGLE: Be fair to the man. Let him answer.

MR. HAYDEN: I intend he shall answer my question.

MR. BOGLE: He is answering your question. You shut him off.

MR. HAYDEN: He has not answered the question.

MR. BOGLE: If you want to be fair, let him answer.

MR. HAYDEN: I asked him a question to be answered by "Yes" or "No."

A. I am here on oath to express myself. Judgment may be good or bad.

(Question read.)

MR. BOGLE: I object to that question as being improper and immaterial, and on the further ground that we have brought this witness here for the purpose of ascertaining whether the judgment of the man who was on the bridge was good or bad, under the circumstances as detailed by the man himself in his sworn testimony.

A. The judgment in the witness chair is better than the judgment of the man on the bridge acting, if you have put before me the facts of the case as they actually were, not as told, but as they are. If you take two vessels here on the table—

Q. (Interrupting) That is all.

A. (Continuing) —as diagrams, and passing, and divert them into various positions, the man who here sits, with no burden upon his mind or mostly with all his faculties at peace, he certainly is in a position to answer this manoeuvering of miniature vessels on this table better than it is where one man has the reins and the other man the whereabouts of the approaching vessel knows nothing.

Q. So that you have to take into consideration, in

connection with all this judgment matter, the circumstances under which the man is acting when he is exercising his judgment, and make allowances for those circumstances as to whether he is careless or not, haven't you?

A. Well, we can't say that he can attribute it to carelessness. I would not call it—I can't make a charge that this man was careless. It is not incumbent upon me to say so, either.

Q. When you say, captain, that you would go full speed ahead if you were on the "Strathalbyn", put your helm hard over to port, if you didn't get any answer, I want you to tell me at what speed the "Strathalbyn" would have been going at that time at what speed the "Virginian" would have been going at that tise and how far apart they would have been and how fast the "Virginian" was swinging, to make that manoeuver that you have described a proper manoeuver?

A. I can't tell you.

Q. You haven't been given any facts on which to make that statement yet, have you? A. No.

Q. And you would have to have those facts in order to make it correctly, wouldn't you?

A. Why, I think I would. I know that if I open a conversation, Mr. Hayden, with a vessel, to pass to port, and his lights are in existence to show me that that I can do rightfully, then I keep doing it, and if a little is not enough I give him more.

Q. Sure, and use your judgment as to whether that is sufficient, from time to time?

A. And I bring into use the mechanical parts of the ship to get that result. And we all know that the velocity of the water past the rudder from the propellor is probably twenty times that of the speed of the vessel, therefore, if I put my helm hard aport, and run this tremendous volume of water against it, I am going to turn that vessel in a smaller radius than any other possible manoeuvering will do it. I have indicated to this man I am going to pass him to port; I port my helm a little; a little is not enough, give her some more, put her hard over. I may have backed my vessel in the first instance to help me churn around in a movable fixed pivot; I don't

get results; I put my engine full speed ahead, to carry out my intention to do that, and I am within the rights all the time in doing it.

Q. All right. Can you say, captain, on the witness stand, now, that had Captain Beecher put the "Strathalbyn" full speed ahead the "Strathalbyn" would not have been cut in two in the middle or in the stern instead of just barely touching the bow of her?

A. I can't say that.

Q. You can't say that?

A. No, I can't say that.

Q. And you can't say so because you don't know the circumstances close enough to make a judgment on it; isn't that right?

A. I know that the two vessels, the ships, must have struck damn near dead ahead, and, in order to accomplish that, there was no port helm put over—hard over, or there was no action of the propeller on the rudder to get that result.

Q. On which ship? A. On the "Strathalbyn".

Q. On either ship?

A. I don't know anything about the "Virginian" in this instance. You put me aboard the "Strathalbyn", having absolute knowledge of my ship and an approaching ship. When you put me on the "Virginian", you put me in a boat looking, I am to come and talk to somebody the existence of which I don't know.

Q. I appreciate that. You say because you think these two vessels struck nearly head-on—

A. (Interrupting) Yes sir.

Q. (Continuing) —that the "Strathalbyn" could not have changed her course.

A. I claim that the courses were not changed, because this man admits—

Q. (Interrupting) Wait a minute.

A. (Continuing) —that this fellow—

Q. (Interrupting) Wait.

MR. BOGLE: Go ahead. Let the man answer.

MR. HAYDEN: No, I am asking questions. I intend to have my questions answered, and not a lot of rambling around here.

MR. BOGLE: Let the man answer your question. There is no use trying to bulldoze him.

Q. (Mr. Hayden) Captain, suppose the "Strathalbyn" were headed somewhat to the port of the course that the "Virginian" was taking—

A. (Interrupting) Yes.

Q. (Continuing) —could not the "Strathalbyn" have changed her course so that they would have struck exactly headon?

A. Not if he put his implements in the position you claim he did.

Q. Could the "Strathalbyn" have changed her course, under those circumstances, so that the vessels would have struck exactly head on, if the "Virginian" continued on her course?

A. Then if he met him head and head, nearly so, he should not have opened the conversation to pass to port. The relative position of those ships were this (illustrating), admitted so by the lights on the "Virginian", that his position was head of him, he saw him over the forecastle head, ahead.

Q. How do you know?

A. Your own argument—your own testimony says that. He evidently opened one whistle to pass this fellow to port. Why? Because the position of the vessel permitted it. The other fellow didn't answer. Why didn't he answer? Because he could not see the approaching ship. Now, here is this vessel coming on here nearly—head-and-head or nearly so. This fellow comes and veers her with the port helm or hard astern, as the case may be, or full ahead, as it might have been—

Q. Go ahead, captain.

A. (Continuing) The "Virginian" coming on her course straight, could not have hit that vessel in the nose.

Q. Go ahead, captain.

A. Now, if one vessel had been over here, with the green light in sight, and the "Strathalbyn" was on the starboard hand of the "Virginian" and he would manoeuver, put it down that they could not have hit head-and-head. If both had put their helm astarboard, they would have come around in this position (illustrating).

Q. You have got it all figured out now, have you?

A. It does not seem to me that there is any action that craft in water will take—other manoeuver than that.

Q. All of the other conclusions that you have come to today, do you think they are as correct as the conclusion that you have come to just now?

A. Well, I don't know that I would be able to anticipate which have been to you, but my intention is to see the facts as you give them to me and answer them according to my grasping your—

Q. (Interrupting) Do you mean to say that you are perfectly willing to sit here and say that when Captain Beecher says he ported that—he put his helm to starboard, that he didn't?

A. No, I don't, but I simply say that the scars on the vessel show that she didn't do it. Whether the vessel was defective or not, I don't know.

Q. All right. A. I don't deny what he says; I don't deny any assertion that he makes.

Q. Do you mean to say that it would be impossible for the "Strathalbyn's" helm to have been put over to port—

A. (Interrupting) Yes, and the vessel still hold her position and hit head-and-head.

Q. (Continuing) —and the vessels to have come together as they did; you mean to say that, do you?

A. Yes sir, I do.

Q. All right. A. I do.

Q. Do you mean to say that—

A. (Interrupting) It is possible this is an overloaded tramp steamer and had no control of herself. She evidently didn't have stability having her bottom under her. How many other ways she was defective I don't know.

Q. Do you mean to say that when Captain Beecher testified the head of the "Strathalbyn" swung from a point to the west of Pully Point to a point to the east of Pully Point, that that is wrong?

A. No, I don't say that. I don't make any charge against his testimony nor his assertion.

Q. You say it is impossible to have been so, do you?

A. I say it is impossible for those vessels to hit nose-and-nose and have his vessel do as he claims.

Q. Then either you or he are absolutely wrong about that, aren't you?

A. If the vessel mechanically is right—is properly constructed.

Q. Then either you or he are absolutely wrong about that? A. Yes sir, I would say that.

Q. When you hear one whistle, which means go to the right, doesn't it, one passing whistle means the ships are going to turn their heads to the right, doesn't it?

A. Well, you get back to the same proposition that I can't answer.

Q. Wait a minute until I get through. One passing whistle means the ships are to turn their heads to the right, doesn't it?

A. I can't answer that as you put it to me, Mr. Hayden.

Q. Some ship is going to put her head to the right when you hear one whistle, isn't it?

A. Yes. I would presume that that was what this fellow might be doing, and why didn't he do it?

Q. Is this the correct rule: "One short blast of the whistle signifies intention of or assent to steamer first giving"—"steamer first giving"—

A. (Interrupting) Yes.

Q. (Continuing) —"the signal to direct course to own starboard"?

A. Yes, and the whistle does not apply in the fog until you know where you boat is.

Q. There was no fog? A. No.

Q. Nobody said anything about a fog.

A. It does not apply. This man is in the fog.

MR. BOGLE: What are you reading from?

MR. HAYDEN: I am reading from the rules and regulations.

MR. BOGLE: Which rules and regulations?

MR. HAYDEN: Rules and regulations published by the government printing office in Washington, April 1st, 1910. Compiled rules and regulations.

MR. BOGLE: Where?

MR. HAYDEN: For all harbors, rivers and inland

waters of the United States except the Great Lakes.

MR. BOGLE: Published when?

MR. HAYDEN: In 1910.

THE WITNESS: We must take for granted this approaching vessel was in the fog. It was in ignorance.

Q. (Mr. Hayden) I didn't ask about fog.

A. He is in ignorance, and fog creates ignorance in the observation and seeing of a steamboat man.

Q. Fog generally creates ignorance; but ignorance may create some fog. A. Maybe.

Q. Especially in testimony. A. Yes.

MR. BOGLE: Oh, what's the matter with you?

THE WITNESS: Let me put it to you this way, Mr. Hayden, just a moment,—

Q. (Mr. Hayden, interrupting) That is all I want to ask you, Captain Sprague.

THE WITNESS: Let me make this remark—it is not evidence—it does not need to be carried so—I would prefer it would not—but I am on the deck of a ship; she is moving through the water, or she is dead, and it is a dark night; somebody hollers out, "Throw me a line; man overboard, throw me a line." I am within two or three feet of a rope, and I pick it up. Do I throw it until I ascertain the position of the man that is hollering for it?

Q. What has that got to do with navigating a ship.

MR. HAYDEN: I move to strike it all out.

THE WITNESS: Can I talk to this man that is trying to talk to me, until I know his position?

Q. Yes, you can talk to him.

A. How do I know he is talking to me? I can't see that vessel, I don't know his whereabouts. And Beecher was the fellow who brought this very same thing in regard to fog, he had a big fight on it, about vessels passing—

MR. HAYDEN: (Interrupting) I move to strike that all out as not responsible to any question.

A. Well, then I didn't wish for him to take at all this talk between you and I, and so requested before I spoke.

Q. I just want to ask one more question: You are

assuming all the way through in your testimony that the pilot on the "Virginian" did not know that the signals of the "Strathalbyn" were intended for the "Virginian", are you? A. Yes.

MR. BOGLE: I object to that.

Q. (Mr. Hayden) What is it? A. Yes sir.

RE-DIRECT EXAMINATION.

Q. (Mr. Bogle) Captain, in my hypothetical question I stated that after the first signal, which was answered by the "Flyer", that they heard this other signal ahead, which they took to be for them. Now, did you understand that, captain? If I tell you now that they, without positive knowledge as to who it was intended for, took it that it meant to be intended for them, does that change your answer to any of my questions,—with some vessel ahead whose lights can't be seen?

A. Let him state that again. (The stenographer here read the question as follows: "Captain, in my hypothetical question I stated that after the first signal, which was answered by the 'Flyer', that they heard this other signal ahead, which they took to be for them. Now, did you understand that, captain? If I tell you now that they, without positive knowledge as to who it was intended for, took it that it meant to be intended for them, does that change your answer to any of my questions"—)

A. (Interrupting) Well, "them" is the "Flyer"?

Q. No, the "Virginian".

A. I don't get that straight now. You have moved from the "Flyer", but I don't just catch it. (The stenographer here read the question as follows: "Captain, in my hypothetical question I stated that after the first signal, which was answered by the 'Flyer', that they heard this other signal ahead, which they took to be for them. Now, did you understand that, captain? If I tell you now that they, without positive knowledge as to who it was intended for, took it that it meant to be intended for them, does that change your answer to any of my questions—with some vessel ahead whose lights can't be seen?")

Q. What I mean is this: Mr. Hayden—as I understood his last question, it stated to you that all of

your answers were upon the assumption that the officers of the "Virginian" did not take any of these whistles which they heard from ahead were for the "Virginian"?

A. I could not have anticipated it as being for me, if I had been on the "Virginian".

Q. If they, without positive knowledge that it was for them, assumed it was probably for them, would that change your answers any as to the proper manoeuvers?

A. Well, I perhaps should not know. They either must know, or not know.

Q. Well, I say, would it change the proper manoeuvers that I have stated, where they did not positively know who it was for?

A. Well, if he didn't know who it was for, he gave himself the benefit of greater length of time to ascertain with the distance between the ships by killing his vessel.

Q. Yes.

MR. BOGLE: The rule that you read into the record, Mr. Hayden, do you say that is the navigation rule —all of the navigation rules on that subject?

MR. HAYDEN: It is a navigation rule. I do not pretend to say it is all. The record shows what I read into it.

MR. BOGLE: Do you say there is no preliminary heading to that rule?

MR. HAYDEN: I think the law shows for itself.

MR. BOGLE: A preliminary rule that the vessels must be in sight of each other?

MR. HAYDEN: The law shows what it is.

THE WITNESS: Doesn't it say, when vessels are in sight of each other?

MR. BOGLE: That is the one he failed to read to you, that part of it.

MR. HAYDEN: The only rule about when vessels are in sight of each other, as to whistling to each other, that is the only rule there is about when vessels are in sight of each other. It has nothing to do with navigating the vessel at all, except so far as whistles are concerned.

Q. (Mr. Bogle) You are familiar with the Inland Rules, are you— A. I think so.

Q. (Continuing) —of Navigation; are you familiar with Article 18, Rule 1, which provides for the signals to be given vessels approaching each other end on or nearly so; and Rule 3 which provides "If when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle"; and Rule 5 of that same article governing the navigation of vessels when near a short bend and moving to and from docks, the signals to be given; and Rule 8 governing the navigation of vessels when running in the same direction; and Rule 9, which provides that "the whistle signals provided in the rules under this article, for steam vessels meeting, passing or overtaking, are never to be used except when steamers are in sight of each other, and the course and position of each can be determined in the day time by a sight of the vessel itself, or by night by seeing its signal lights"?

MR. HAYDEN: That is not all it says.

MR. BOGLE: You read it, then, if it is not what it says.

MR. HAYDEN: Is that "by seeing its signal lights"?

MR. BOGLE: You read it, there it is.

A. Those are the rules that have governed my manipulations of vessels. Up to now I have got a good record; I don't know how long I can keep it.

Q. Does not the single blast of a whistle, captain, according to the rules mean, "I am directing my course to port"?

A. It does. He is porting his helm, veering to starboard.

Q. "I am directing my course to starboard"?

A. Yes.

Q. Isn't that what the rules provide?

A. That is what it means, and vessels communicate when they are in sight of each other—the form of a

vessel, by day, open and clear atmosphere, and by the lights at night.

MR. HAYDEN: I object to all this testimony and any further questions along this same line, on the ground that the law is determined by the court and not by the captain, under those circumstances.

MR. BOGLE: I merely want to get the record straight from your misreading or failing to read all of the rules which you read.

Q. (Mr. Bogle) Now, captain, the mere fact that you receive a single blast from some vessel ahead, which you can't see, would that indicate that this vessel was coming toward you to pass you port to port, or if she was crossing your course under a port—changing her course to starboard, wouldn't she blow you the same whistle?

A. It does not apply to me at all; if I can't see the vessel, I don't know that he is talking with me.

Q. I see, but say that you can see a vessel and the vessel is approaching you, crossing your course and she is changing her course to starboard?

A. If he has me on his red light side he has got the right-of-way. He might be crossing my course at right angles or head-and-head meeting and veers to port to pass me—he veers to starboard with a port helm to pass me, exposing his red light side—his port side.

Q. When you hear a single blast of the whistle from ahead and you cannot see that vessel, have you any right to answer it? A. No sir.

Q. Well, captain, have you any right, under the rules, to change your course without blowing a whistle?

MR. HAYDEN: I object to that.

A. No. I kill my ship and hold my head.

Q. (Mr. Bogle) If, under the circumstances of this case, you had, as Mr. Hayden intimated you might have done, followed after the "Flyer", even if that had been a safer course would you have had a right to have taken that course without blowing?

A. What would be the necessity or occasion for me taking that course, with no knowledge of danger ahead?

Q. I didn't see any necessity, but what I am getting

at is this: Under the rules you would have to blow, if you changed your course, when another vessel was in sight of you, wouldn't you?

MR. HAYDEN: I object to that. The rules prescribe what you shall do.

A. I can't blow if I don't see the vessel.

Q. (Mr. Bogle) That is what I am getting at. If you change your course you have to blow, don't you?

A. If I change my course, something would bid me to do it, and if I have killed my ship I am giving a greater lapse of time for that information to come to me so that I can act wisely.

Q. Captain, Mr. Hayden has asked you about or questioned you upon your testimony as to what you would have done after the "Strathalbyn" had blown her second whistle to the "Virginian," which had remained unanswered, and noticed that the "Virginian" was changing her course; that is their testimony and I ask you that question upon that assumption.

A. Well, am I on the "Virginian" now, or on the "Strathalbyn"?

Q. You are on the "Strathalbyn."

A. Well, I blew my first whistle for cause; I got no reply; I blew it again for the same cause, and applied more energy,—would, to maintain that that I had endeavored to convey to my approaching ship, and port my helm.

Q. Now, captain, say at the time of this second whistle from the "Strathalbyn" to the "Virginian" that the two vessels were approximately a half mile apart—

A. (Interrupting) Yes.

Q. (Continuing) —and that the "Virginian" did not answer that whistle, and shortly thereafter, according to their testimony, shut out her red light—

A. (Interrupting) Yes.

Q. (Continuing)—would the "Strathalbyn" have the right, or would it be proper and safe navigation, for her to continue on with the engines stopped, under her own headway, and get herself in a position of danger where she would have to take such measures as you have testified to, or going full speed ahead with the wheel hard over.

MR. HAYDEN: I object to that question on the ground that it does not fairly state the evidence.

A. Well, I must say there, if little is good, more is better, and I am endeavoring to get out of the track of this vessel. I first indicate to an unknown listener of something that I was going to do; I substantiate that by a second announcement of that very same thing, and I am busy doing it, and in getting it my helm is hard aport, my engines may be full speed astern or full speed ahead; either would promote the circle, but full speed ahead would give the result with less radius of action.

Q. What I am getting at is this: The "Strathalbyn," according to their own testimony, had the "Virginian" in sight—

A. (Interrupting) Yes.

Q. (Continuing) —from the time she rounded Pully Point—when the "Strathalbyn" rounded Robinson Point she was in full knowledge of the entire situation. Now, is there any excuse for her getting or allowing the vessels to get in a position of danger without blowing a danger signal in sufficient time to prevent it?

MR. HAYDEN: I object to that. That is a matter of law to be determined by the court.

A. Well, I would say that if he had introduced what he claims he did do—had done it quicker, they would not have smashed where they did.

Q. But I mean when one vessel is master of the situation and has a full view of the other vessel and her navigation, isn't it up to her to prevent the vessels becoming in dangerous proximity, when the other vessel fails to answer any of her signals?

A. Yes, apply the remedy.

Q. Mr. Hayden asked you if the blowing of one whistle by the "Strathalbyn" would not in the first place indicate her desire to pass to port, and if that would not require the "Virginian" to also change her course to port? A. No.

Q. If the "Virginian" could have done—could the "Virginian," provided the vessels were in sight of each other, if she considered such a course unsafe, for any reason was unwilling to take that course, wouldn't she

have a right to either remain silent or cross-whistle to indicate her disapproval?

A. The "Strathalbyn" has nothing whatever to do but to blow an alarm whistle.

Q. I say the "Virginian," hasn't she that right, is she compelled to follow a course followed by another vessel, if she considers it dangerous?

A. She is compelled to—I am not governed by vessels in proximity to me. I am to keep clear of them, but he does not tell me the manoeuvers that I must undertake. In this instance—and there you are talking to no one, because he doesn't hear it,—he doesn't see the vessel —you can't charge the "Virginian" of wrong action.

Q. The purpose of my question was this, of determining whether or not the two vessels in meeting, and assuming for the purpose of this question they were in sight of each other, one vessel takes the initiative and indicates the way she is directing her course, is the other vessel under all circumstances compelled to assent to that? A. When they see each other.

Q. You think they are compelled to assent to it, do you?

A. Yes; but if he can't comply, announce the fact, blow his danger signal, stop his ship, put his helm over the other way.

Q. Is that the only way he can announce the fact, captain?

A. He is the man in Egypt; there is only one man working in that water. I claim, as I see it, that the "Strathalbyn" had it within their own hands if they had acted in time, to have avoided that collision. He admits that he saw this approaching ship. I am positive that if he had put his helm hard aport, either full speed ahead or full speed astern, he would not have been hit forward of the collision bulkhead at the angle at which the contact took place—not from the photograph.

Q. Captain, what did you mean when you said you were in doubt—if you had been on the "Virginian" you would have been in doubt as to the course or intention of the vessel ahead of you?

A. Well, I am absolutely in doubt, because I can't see her, I can't see the manoeuvering.

Q. That is what you mean, you could not see or know anything about her?

A. I am absolutely in ignorance of what she is doing. I know that there is some craft ahead of me or in somewhere forward over the forecastle head, because she has made numerous noises and I hear sound from that direction and from that alone. I stop my ship and kill her, to give me a greater length of time to have this thing explained so I can act wisely.

Q. Would the fact that she kept whistling to you indicate that she could see you?

A. Well, it would certainly indicate that one vessel saw some other vessel, that is certain; he was not talking to himself.

Q. Not being able to see this other vessel, you would not know whether you were is danger or not, would you, captain?

A. I certainly could not, because my actions would prove that I could not. I had given myself—hope to give myself a greater lapse of time, for something to be brought to light to govern my movements. The same thing, I take a vessel out of an enclosed dock, a slip, with high construction on either side of me, I am going to back out into the highway; the construction that is around me forbids me seeing anything that might be approaching at right angles with the course that my vessel will follow in getting away from this shore convenient; I blow three whistles to announce that there is a vessel moving, backing out of a pocket. He does not know what to do until he see the approaching vessel —if there is one in existence, he does not know what to do until he sees my motion; but the whistles do cause immediate alarm or attention, puts a man on the alert to be in readiness to act. These little gasoline whippersnappers around here are apt to bob out from in any concealed place. The condition here on our waterfront would apply in the slips between—the slips between 4 and 5 and 5 and 6 and 6 and 7; vessels could be in there unseen to each other, and two of them departing at the same time, for their own protection they should blow three whistles going astern: Anything that is passing

up and down the waterfront has a chance to prepare for an emergency that might occur.

Q. Under the circumstances of the position of these two vessels, as I have stated it to you, do you think that it would have been negligence on the part of the "Strathalbyn" to have allowed the vessels to get within a position of say a thousand feet of each other without blowing a danger signal?

MR. HAYDEN: I object to that as—

A. (Interrupting) Well, I can't say that.

MR. HAYDEN: Go ahead.

Q. (Continuing) When the lights of the "Virginian," as they appeared to the "Strathalbyn" according to their testimony—range lights were broad and the green light alone is visible?

A. The "Strathalbyn" has got nothing to do but put his helm hard aport, either full speed astern or full speed ahead; he has announced his desire to pass this approaching vessel on a certain position, he does not cross his own whistles.

Q. I am talking about a danger whistle now.

A. After he found it necessary to blow the second passing whistle to port, to which he got no answer to the first and the second, then it is certainly his time to blow a danger whistle—the "Strathalbyn."

RE-CROSS EXAMINATION.

Q. (Mr. Hayden) Captain, would you consider it good navigation on the part of the "Virginian" to allow the vessel to proceed, after the engines had stopped, for a space of about a minute after hearing the danger signals from the "Strathalbyn," before he backed?

MR. BOGLE: Oh, I object to that as being no such testimony in this case to substantiate any such thing.

A. May I relate it to you by showing about my own experience with ships—

Q. (Interrupting) Just answer my question. You are supposed to answer my questions as nearly as you can, captain, and I am not putting you on the stand. If you can give me an answer to my question, I would be obliged to you.

A. I will try to.

(Question read.)

A. Well, I am in a quandary again, I can't answer that, and for the reason—

Q. (Interrupting) When you heard the danger signals from a vessel ahead, if you were on the "Virginian" wouldn't you immediately reverse your engines, especially after having heard three passing whistles or two passing whistles?

A. Well, I can't say that I would do it instantly. If you let me explain why I say that, it will make it clear to you. Presumably the pilot on the "Virginian" knew his vessel; there are a great many vessels that are making full speed ahead or ranging ahead, immediately after a stopping signal and full speed astern they will churn right around on their heel; hard to make them follow their head.

Q. You are talking about a general proposition; it has nothing to do with this case, captain.

MR. BOGLE: I think it has got everything to do with it.

A. He is the judge of the vessel that he is handling.

Q. Yes, but, captain, both the master of the "Virginian" and the pilot have testified that she backs straight when you back her? A. Yes.

Q. (Continuing) —she does not swing. A. Yes.

Q. They both so testify.

A. If that is the case, which is a very rare one, it was his duty to back his ship, one continuous signal from full speed ahead to full speed astern.

RE-DIRECT EXAMINTION.

Q. (Mr. Bogle) That is when he heard the danger signal? A. Yes.

(Witness excused.)

MR. HAYDEN: Now, as I understand our arrangement, we have stipulated that libelant's identification "Z 1," being the signed report of survey of the "Strathalbyn," at Everett on December 1st, 1913, and being signed by James Fowler, W. Frank Andrews, William H. Logan, E. C. Genereaux and Frank Walker, may be considered as the evidence of those gentlemen that on the first day of December, 1913, at Everett, the "Strathalbyn" was measured and that the measurements found therein are correct—that the measurements stated

in the report were those that were taken and found aboard the "Strathalbyn" and are correct as of that date.

MR. BOGLE: That is all right; we stipulate that that may go in without any further testimony, as being the measurements those gentlemen found on the boat on that date. Now, another matter: Do you remember when we were up in Victoria—

MR. HAYDEN: I propose to put it in now—the instructions as to the lights.

MR. BOGLE: That is the report of the Board of Trade.

MR. HAYDEN: Yes, instructions as to the survey of lights.

MR. BOGLE: Put that in in connection with Logan's testimony—wasn't it—

MR. HAYDEN: Yes. Do you want the whole thing to go in? I don't think it is necessary to put it all in. It seems to me if we just read what—

MR. BOGLE: (Interrupting) Let's see, why not put it in and if we have to go up on this case we can stipulate.

MR. HAYDEN: All right; introduce it in evidence, then.

MR. BOGLE: As a part of the testimony of Logan.

MR. HAYDEN: I introduce the pamphlet of instructions as to survey of lights and sound signals, published by his His Majesty's stationery office, these instructions being issued by the Board of Trade, under the provisions of the Merchant Shipping Acts, for the assistance and guidance of their officers in surveying the lights and sound signals of ships. So far as I am concerned, I am introducing it for the purpose of showing the regulations in connection with the location of the wick of the lamp with its relation to the block in the forward part of the screen which is provided for in Section 22, on page 11, Section 23, on page 12, and Plate 1 and Plate 3. The rest of it I do not think has anything to do with this at all.

MR. BOGLE: I have no objection to this going in from pages 11 and 12, that you have covered; and, let's see, you put in Plates 1 and 3, didn't you?

MR. HAYDEN: Yes.

MR. BOGLE: 1 and 3, with the understanding that if there are any regulations printed prior to this time, which are different, that I shall have the privilege of introducing those.

MR. HAYDEN: Oh, yes, sure.

The report of survey, marked libelant's identification "Z-1," heretofore referred to, is attached hereto and returned herewith.

The pamphlet "Instructions as to the Survey of Lights and Sound Signals" was marked libelant's exhibit "Logan Z-2," same being attached hereto and returned herewith.

(Filed May 26, 1914.)

## NO. 1036, NO. 1052—CONSOLIDATED CASES. OPINION ON FINAL HEARING.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Petitioner,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant.

HUFFNER & HAYDEN,
For Libelant.

BALLINGER, BATTLE, HULBERT & SHORTS,
For Strathalbyn S. S. Co., Ltd., as bailee of cargo.

BOGLE, GRAVES, MERRITT & BOGLE,
For Respondent, American-Hawaiian Steamship Co.

CUSHMAN, District Judge.

On the night of January 12, 1912, between the hours of 7:30 and 8:00 o'clock, the British tramp steamer "STRATHALBYN," owned by the Strathalbyn Steamship Company, a corporation, and the American freight steamer "VIRGINIAN," owned by the American-Hawaiian Steamship Company, were in collision on the waters of Puget Sound, at a point somewhere between Pully Point and Robinson Point, as a result of which both vessels and a portion of the lumber cargo aboard the "STRATHALBYN" sustained damage.

The above consolidated causes arise from the said collision, and were brought by the above parties for the

purpose of recovering damages sustained as the result of said collision. The causes come before the court at this time upon the libel of the Strathalbyn Steamship Company, as owner of the Steamship "STRATHALBYN," and the answer and cross-libel of the American-Hawaiian Steamship Company, as claimant and owner of the Steamship "VIRGINIAN," and the answer of the Strathalbyn Steamship Company, Limited, as owner and claimant of the Steamship "STRATHALBYN" to the cross-libel of the American-Hawaiian Steamship Company.

Subsequent to the filing of the above named libel, cross-libel and answers, the Strathalbyn Steamship Company, Limited, as bailee of cargo aboard the steamship "STRATHALBYN" at the time of the collision, filed its libel against the steamship "VIRGINIAN" on account of damage sustained by the said cargo, to which said libel the American-Hawaiian Steamship Company, as owner of the Steamship "VIRGINIAN," filed its answer and petitioned the court under Supreme Court Admiralty Rule 59, alleging that the said collision and consequent damage were caused solely by the fault of the Steamship "STRATHALBYN," and asking that the said Steamship "STRATHALBYN" be seized to answer for the said damages, or that her owners be brought in as parties respondent to the said libel to answer for said damages, which petition was granted, and the Strathalbyn Steamship Company, Limited, as owner of the Steamship "STRATHALBYN," filed its bond to answer for said damages, and filed its answer in the suit.

The parties hereto have stipulated that the consolidated causes should be submitted to this court for final determination upon the question of liability for the said collision, and should then be referred to a commissioner for the purpose of taking testimony as to damages, in accordance with this court's decision upon the question of liability.

As recovery is sought on behalf of each vessel for damage, alleged to have been caused by the other, the facts must be determined without the usual aid from any rule as to the burden of proof.

Libelant contends the cause of collision was the fault of the "VIRGINIAN" in not keeping a proper look out, and errors in navigation, in not porting her helm when signaled to do so by the "STRATHALBYN"; in not stopping and reversing her engines sooner; and in not giving a danger signal, if unable to see the lights of the "STRATHALBYN," after hearing the latter's passing signal.

The "VIRGINIAN" contends that the cause of collision was fault upon the part of the "STRATHALBYN" in that her lights were too dim to be seen; that her side lights were obstructed so as not to be seen from ahead; that she had no range light; that she failed to stop and reverse her engines promptly upon receiving no answer from the "VIRGINIAN" to her passing signals.

A comprehensive statement or analysis of the mass of testimony taken will not be undertaken. The conclusion as to the effect of the testimony is deemed sufficient.

The "STRATHALBYN" was a tramp steamer 387 feet long, with a 52-foot beam, having a full cargo of lumber, bound from Tacoma for Sydney, Australia. The "VIRGINIAN" was a freight steamer 492 feet long, with a capacity of 12,000 tons, carrying about 2,000 tons, on her way to Tacoma from Seattle, to finish loading.

The point of collision was not over a mile and a half southerly from Pully Point, off which point the "FLYER" overhauled, signaled and passed the "VIRGINIAN" to starboard, keeping off about 200 yards. This signal was answered by the "VIRGINIAN"—both of which signals were heard by the "STRATHALBYN" then approaching the "FLYER" and "VIRGINIAN," having passed Robinson Point and being on a course opposite to that of the "VIRGINIAN." The "FLYER" was making 14 knots an hour; the "VIRGINIAN" 11 and the "STRATHALBYN" 6, or a little more.

A few minutes after this passing of the "VIRGINIAN," probably not over five minutes, the "STRATHALBYN" blew one whistle to the "FLYER," requesting a passing port to port, the "FLYER" and "STRATHALBYN" being not more than a mile

apart. The captain of the "FLYER," seeing two white lights on her and concluding that they were range lights, accepted the signal, answering with one whistle. Both of these whistles were heard by those then navigating the "VIRGINIAN," but they testify they saw no lights on the "STRATHALBYN."

When the "STRATHALBYN" was on the bow, or abeam of the "FLYER," she blew one whistle to the "VIRGINIAN," which then must have been considerably less than a mile away, as it would take the "FLYER" twenty minutes to get a mile ahead of the "VIRGINIAN." It was three minutes, or more, from this first whistle to the "VIRGINIAN" until the collision occurred.

The pilot and third mate of the "VIRGINIAN," on the bridge, and the look-out, properly stationed, heard this whistle. The pilot realized—as, under the circumstances, he could not well help—that the whistle was from ahead and intended for the "VIRGINIAN." None of these men were able to see any light, or make out the approaching "STRATHALBYN." It is testified that the "VIRGINIAN'S" pilot then signaled for the stopping of the engines, hearing which signal, the captain of the "VIRGINIAN," then below, came on the bridge, and was immediately informed of the reason for stopping the engines. A second single blast of the whistle was then heard from the "STRATHALBYN" ahead. Still no lights or vessels being seen by any of those watching from the "VIRGINIAN," it is testified, the engines were reversed and, a minute or over after reversing, a danger signal—four blasts—was heard from ahead. Still seeing nothing ahead, the captain of the "VIRGINIAN" gave three whistles to signify that his vessel was going full speed astern.

Within less than a minute, the boats came into collision, immediately prior to which the look-out and third officer on the "VIRGINIAN" saw a white light on the "STRATHALBYN." The "VIRGINIAN" immediately disengaged herself from the "STRATHALBYN" and, as they backed away, the port light of the "STRATHALBYN" was seen aboard the "VIRGINIAN."

From the time of hearing the "STRATHALBYN'S" first whistle, those on the "VIRGINIAN" testify that her course was not changed and that, not being able to make out the "STRATHALBYN," or her lights, her whistles were not answered.

Those in charge of the navigation of the "STRATHALBYN" testify that, when the "STRATHALBYN" gave her first signal, a single blast, to the "VIRGINIAN," the red and green lights of the "VIRGINIAN" were plainly visible, indicating that she was coming directly head-on; that, as this signal was given, the helm of the "Strathalbyn" was ported a point or more; that, after waiting a minute and receiving no answer from the "VIRGINIAN," her red and green lights being still visible, another single blast was blown; the helm again ported and the engine stopped; that, as this signal was given, the red light of the "VIRGINIAN" began to shut out and her green light to open, indicating that, instead of going to starboard, as signaled, she was directed across the "STRATHALBYN'S" bow; that, after waiting a minute, the "VIRGINIAN" not answering and her red light still being hidden, the "STRATHALBYN" blew another single blast and a minute and a half later reversed her engines. The "VIRGINIAN" still coming on; giving no signal; no change in her course being observable and collision being imminent, the "STRATHALBYN" gave the danger signal, which was immediately answered by three whistles from the "VIRGINIAN."

In spite of a discrepancy in the testimony as to the number of passing signals blown by the "STRATHALBYN" before the danger signal—two, as testified on behalf of the "VIRGINIAN," and three, as averred by those on the "STRATHALBYN," it is clear that three were given.

The faults alleged as to the lights of the "STRATHALBYN" will be first considered, as first in point of time, and so affecting that which followed. The night was dark and cloudy, a good night for seeing lights. The wind was southerly, an advantage to the "VIRGINIAN" in hearing the whistles of the "STRATHALBYN." There was, at the place of the

collision, plenty of room for, and no embarrassing element to the navigation of either vessel, other than that produced by the conduct of the other.

The "STRATHALBYN" was equipped with electric signal lights, but, several days before she was ready for sea, the dynamo was found out of commission and was not repaired prior to her departure. She was supplied with standard oil lamps and oil. The lamps were new two years before when brought aboard, but there had never been occasion before to use them. The oil had been secured six months before.

Several hours before leaving Tacoma, quartermaster Taylor, as he testifies, carefully prepared and tested these lamps, put in new wicks and oil fresh from the tank; lighted them and trimmed the wicks. The witness's testimony, if true, could have been corroborated in certain particulars where it has not been done.

Prior to reaching the point of collision, the "STRATHALBYN" met and passed, on her starboard, near Brown's Point, the Steamers "INDIANAPOLIS" and "DARING." The "INDIANAPOLIS" later overtook and passed to starboard of the "STRATHALBYN" at Robinson Point, a few minutes before the collision. The "STRATHALBYN" met and passed port to port the Steamer "FLYER" immediately before the collision.

After the collision, the "SALMORA," a thirty-ton gasoline tug, passed between the "VIRGINIAN" and "STRATHALBYN"—about 150 yards away from the "STRATHALBYN" and a little nearer the "VIRGINIAN."

The effect of the evidence of those in charge of the navigation of the different vessels passing the "STRATHALBYN" on the night in question is that her lights were not ordinarily bright; that they had difficulty in seeing them; that they were not visible as far as they should have been; that the lights could not be seen from points ahead where they should have been.

The stern light upon the "STRATHALBYN" went out before Robinson Point was reached. The starboard side light was trimmed and relit immediately after the collision—whether finding it to be out or very dim was the occasion is not clear from the testimony. The

masthead light was taken down after the collision and examined. When it was again raised, the cap on the top of the lamp was left up to give ventilation. It is not clear whether it was not closed when it was taken down for examination.

The officers of the "STRATHALBYN" appear to have looked at the lights often during and before the signaling to the "VIRGINIAN." While vigilance in this regard is to be expected of men experienced in navigation, there appears to have been over anxiety on this night about the lights, which tends to show that it was realized that they were not satisfactory.

A circumstance occurring an hour or more before the collision, when the "STRATHALBYN" near Brown's Point, met the "DARING," probably called the attention of those on the "STRATHALBYN" to the condition of the lights. The mate on the "DARING," who was at the wheel, testifies:

"A. Well, first I heard two whistles, and then the next was I discovered a dark object ahead, and about that time the captain stepped out from his room and asked why I didn't answer the two whistles * * * (interrupted).

"Q. Did you answer the two whistles?

"A. Eventually, yes sir.

"Q Did you at the time when you first heard them?

"A. No sir.

"Q. Why didn't you?

"A. Because I didn't recognize where they came from.

* * * * * * * * *

"Q. Could you see the vessel that gave these whistles?

"A. Well, I will have to say no, under the circumstances, without explaining.

"Q. What was the first thing that you did see of the vessel, and whereabouts did you see her, if you saw her?

"A. Well, she was pointed out and at about the same time it was apparent to me that the dark object was opening out lights, and I was convinced, then, that it was a vessel.

"Q. Did you see any lights on her?

"A. I saw two.

"Q. Where were they and what kind of lights?

"A. They proved to be on the forward part of the vessel, white lights; and about the time I answered or eventually answered the two whistles, the one light--lower light disappeared, and I concluded it was a lantern over the side where they had been clearing their anchors or something of that kind."

The failure of the "DARING" to promptly answer the signal of the "STRATHALBYN," probably, suggested to the latter's officers a defect in her lights.

The regular electric side lights of the "STRATHALBYN" were placed on the upper bridge. The oil lights, being used upon the night of the collision, were not in the screens upon the upper bridge, but in those on the lower bridge, or chart room deck, which was 15 feet, 4 inches above the cargo deck below. No defect has been shown in these screens, which were eight inches above the chart room deck.

The cargo forward on the deck below was piled about fourteen feet high, that is, approximately as high as the lower bridge, so that men moving about could step from the top of the lumber upon the lower bridge. This lumber was laid, or piled, lengthwise of the ship between stanchions placed on end, or standing up inside and against the rail on either side of the deck forward. The stanchions extended some distance above the lumber piled between them, some being as high as twenty feet above the deck. All of the stanchions extended higher than the lights and would obscure them from ahead, if not kept inboard from the blocks in the front of each light screen, placed there to keep the lights from shining across the bow. (Inland Rules, Art. 2 (d), 2 Fed. Stat. Ann., 174; 30 Stat. at L., 97.)

These stanchions were about seven in number, upon either side, placed at irregular distances apart, the average being about twelve feet. They were six by ten inches, each, according to the testimony for the "STRATHALBYN," placed with the broad face to the rail, though it is shown to be usual to place the narrow face to the rail for greater strength in holding the cargo.

The outboard side of the blocks in the front end of

the light screens were 47 feet, 7 inches apart. The lights in the screens, back of the blocks, were the same distance apart. The first stanchion upon the port side was about eight feet forward of the front of the lower bridge. At this point, from the inside of the bulb, or top of the rail on the port side to a like point on the starboard side was 48 feet, 7, or 7-½ inches, about six inches and a half further outboard on each side than the side lights. It, therefore, follows that, unless this first stanchion on the port side leaned inboard at least six and a half or seven inches at a point level with the lamps used, it would obstruct this light forward.

Much testimony has been taken as to the position, in this respect, of this and the stanchions forward of it, prior to, and after the collision, as well as that of like stanchions used with later cargoes on the same ship, together with the question of whether such stanchions generally tend outboard, or otherwise.

The height of the rail above the deck, against which the stanchions were placed, was about four feet. The lumber cargo, therefore, extended ten feet above the rail between the stanchions. The stanchions, after the cargo was on, were drawn together by lines passing across the deck over the lumber, the winch being used to draw them up.

Under these circumstances, it is reasonable to conclude that the stanchions would lean outward slightly. By the force of gravity, as the loading progressed, the tendency would be for the lumber to spread and shuffle outward, and all the effect of this would not be overcome by drawing the stanchions inboard afterwards. Such result with poles or lumber on railroad cars, or cord wood upon a wagon, between stanchions, are matters of common observation.

In one slight particular there was a difference between the stanchions on either side. Upon the port side, underneath and on the inside of the rail top, running lengthwise of the rail, was an iron pipe which extended an inch further inboard than the innermost part of the rail top. To protect this pipe, an inch piece of board was placed between the stanchions and the rail. While this might tend to lessen, to a slight degree, the obstruction

to the light shining forward, by the stanchions on the port side over the starboard, it would not cure it.

The pilot of the "STRATHALBYN" testified to seeing the port light shining on the stanchions, as follows:

"Q. Did you observe the rays of the red light upon the stanchions?

"A. Indeed, sir, several times.

"Q. State how they appeared?

"A. They ranged right forward and touched three or four stanchions I noticed.

"Q. On what side?

"A. Port side; the red light.

"Q. I mean inside or outside the stanchions?

"A. The outside stanchions, sir.

"Q. It showed full on the first stanchion did it?

"A. Yes, sir.

"Q. And ranged along so that you could see—

"A. I could see the reflection of the light on three or four stanchions.

"Q. Ahead of the first stanchion?

"A. Yes, back to the foremast rigging."

The Captain of the "STRATHALBYN" testified to seeing the light shining on the stanchions:

"Q. Did you observe the rays of light upon these stanchions?

"A. Yes, I did.

"Q. How did it appear?

A. They would shine on the outside of the stanchions."

As also, does the first mate:

"Q. Did you notice whether or not the red rays of the port light shown on the outside of any of these stanchions forward of the light?

"A. I could see the reflection on both sides, the green and red one, on the after stanchions.

"Q. Did you notice it ahead on any other stanchions, ahead of the after stanchions?

"A. No, I don't think I saw it on any of the rest of them. I don't think so."

The condition described could only result in hiding

the light from ahead. The only question would be the extent, or zone, over which it would be hidden.

Much testimony has been introduced on libelant's part to show that the lights of the "STRATHALBYN" were bright and visible from ahead; but it is overborne by that which has been indicated. Passengers upon the "FLYER" were among the witnesses of libelant.

While they were, doubtless, as honest and disinterested as the witnesses for the "VIRGINIAN," those on the "FLYER," "INDIANAPOLIS," "DARING" and "SALMORA," actually engaged in navigating them with reference to the "STRATHALBYN," as witnesses, while possessing the advantage of having as great, or better opportunity, knowledge, skill and lack of interest in making these observations of the "STRATHALBYN" and her lights, as had libelant's witnesses, also had an added advantage in the necessity and incentive, in navigating their respective vessels, with reference to the "STRATHALBYN," to observe her and her lights closely.

This one advantage on their part, though they gave negative testimony—that they did not see the lights upon the "STRATHALBYN", or see them as soon as they should have been seen,—more than compensates for the advantage of those witnesses who had no particular reason to observe, who testify that they recall seeing the lights in question.

This does not apply to a number of witnesses for libelant, who, afterward had reached Tacoma of the collision, set out in a small boat to meet the "STRATHALBN" upon her return to Tacoma. They testify that, as the "STRATHALBYN" came towards them, they could see both of her side lights at the same time. Owing to the evident interest of these witnesses, the inconsistencies in their testimony and the fact that their observations were made several hours after the collision, their evidence is considered of less value than that of those navigating the other boats.

The "VIRGINIAN", by not answering the passing signals of the "STRATHALBYN" and the "DARING", by not promptly answering her signal, acted in accordance with what those navigating the "VIR-

GINIAN" and "DARING" now testify was the condition of the "STRATHALBYN" at that time, in not having lights that could be seen. These facts give added force to their testimony.

*The Amboy,* 22 Fed. 555;
*The Westfield,* 38 Fed. 366;
*The General,* 82 Fed. 830;
*The Pierre Corneille,* 133 Fed. 604.

In a sense, the same may be said of the "INDIANAPOLIS", for her captain and quartermaster say that, having passed the "FLYER" and "VIRGINIAN" a few minutes before the collision, and having noted the poor condition of the "STRATHALBYN'S" lights upon the two occasions of meeting and overhauling her, the captain of the "INDIANAPOLIS" was apprehensive that there might be trouble in the "VIRGINIAN" and "FLYER" meeting the "STRATHALBYN" and, for that reason, he did not change his course immediately upon passing Pully Point as usual —which would have shut off his view of all these vessels, but kept on his course for a time watching them.

The greater value of the testimony regarding the lights on the "STRATHALBYN" of those navigating the "FLYER", over that of her passengers, would be greatly lessened as the "STRATHALBYN" drew abeam and passed the "FLYER" for, as soon as the "FLYER" was well clear of the "STRATHALBYN", the motive of the former's officers to closely observe the "STRATHALBYN" would have ceased and their attention be concentrated along the course of their vessel; while the passengers, without such responsibility, might then well observe the "STRATHALBYN" and her lights more closely than the officers of the boat. It is, therefore, probable that these passengers did observe the port light of the "STRATHALBYN" when she was abeam the "FLYER", though the officers did not.

None of libelant's witnesses is more positive in testifying that both side lights were visible from a point ahead than Strand,—a man taking care of the boats at the Tacoma Yacht Club, who testifies that, after putting the lights out on the yachts, he went ashore to the wharf, where he met a longshoreman, to whom he

talked as he looked out over the Sound. His testimony regarding the lights on the "STRATHALBYN", as she lay at anchor shortly before going to sea, is as follows:

"A. And I seen both side lights at the same time, boat, was swinging once in a while and mostly I seen the green light, and they appeared to me to be ordinary good side lights.

"Q. How did the masthead light appear to you?

"A. Just as good as the rest of them—side lights.

"Q. How far away would you say the "Strathalbyn" was from the Commercial bridge where you were standing?

"A. Oh, about a little bit more probably than a quarter of a mile. * * * *

"Q. Now, captain, will you describe how the vessel was swinging, if she was swinging at all, just describe that?

"A. Yes, she was swinging more or less, just as the wind appeared; sometimes a little bit stronger, you see, and sometimes dying down again.

"Q. And her bow was pointing which way?

"A. Her bow was pointing diretly on the place where I was standing, most of the time.

"Q. How would you say the side lights appeared to be burning compared with the ordinary lights of vessels?

"A. I could not see any difference from an ordinary good light—good side lights and her side lights.

"Q. And the same question with respect to her masthead light?

"A. Yes. Yes, sir, all the lights.

"Q. How long were you standing on the Commercial Street bridge observing these lights and the vessel?

"A. I was standing there for about a half an hour.

"Q. And how did it happen you were standing there for a half an hour?

"A. I was talking with a longshoreman and looking at the boats passing around there, and

looking after the yachts, because it was blowing more or less and that is why I happened to stay there and watch the harbor.

"Q. Did you see these lights more than once while you were standing there?

"A. Oh, yes, on and off all the time."

The side lights are running lights and only in place when the vessel is under way. Taylor, the quartermaster on the "STRATHALBYN", who had charge of, and placed the lights in the screens testifies:

"Q. What time did you light them?

"A. I had finished my tea, and they sang out "LIGHTS OUT", and they started to heave away the anchor.

"Q. Who told you to light the lights when they started out?

* * * * * *

"A. It was my place.

"Q. Is that your regular duty on the ship?

"A. It was that day.

"Q. Did anybody order you that evening to light the lights, and if so who was it?

"A. I heard the order come down from the deck, 'Lights out' and it was my place to light them, and I went and lit them."

Mr. Strand was, doubtless, mistaken.

A number of the crew of the "STRATHALBYN", in the forecastle at the time of the collision, who clambered back over the lumber along the port side, testified to seeing the "STRATHALBYN'S" port light. Some of them say they saw it inside; some outside of the stanchions, and some are not clear how they saw it.

The collision left the "STRATHALBYN" with a bad list to starboard, taking her starboard side light nearly to the water. If any of the crew saw the port light inside the stanchions, there must have been a very considerable obstruction to the light forward and off the port bow.

Considering that the ship narrowed forward of the bridge from about 48 feet to about 44 feet (or four feet) in a distance of 80 feet, there would be two feet narrowing upon the port side; that seven stanchions

were arranged in this distance along the rail, each exposing a six-inch surface, a total exposed surface of three and a half feet, it is clear that, from any point forward of the stanchions, there would be such an overlapping of stanchions as to prevent a man seeing the side light between the stanchions. It is probable, on account of the list of the vessel to starboard, that, as the men came along the port stanchions; got near the light and straightened upright between the last stanchions, all of which would be canted with the ship to starboard, they were able to look down over the outside of the last stanchion into the port light screen, the inside board of which would be also canted to starboard. This is to be inferred from the testimony of these witnesses.

One of the crew testified that, after the collision, his knee was hurt, and,

> He crawled on his hands and knees to the port side; then crawled along, leaning on the railing, walking along stanchion by stanchion, dragging himself along as best he could. After he got to the port side he stood up and went aft. That he saw the port light when he was going aft on the port side; that he could look straight back at it and that he was about ten feet in front of it when he first saw it.

Another testifies that,

> He did not see the port light until he got up on the port side. The vessel was heeling over and he made for the high side of the boat. He did not look over the stanchions to see the side light; he could see through the stanchions and see the port light, because the stanchions were far apart. He saw the side light as soon as he came up on the port side. He walked up to the port side at right angles from where he came out. He was more than 15 or 20 feet from the light when he first saw it and was standing inside the stanchions when he saw it.

A third testifies:

> "She (the Strathalbyn) had listed over all the time * * *"

and that, after the collision:

> "She had listed bad enough that I had to hold to

those Scantlings (stanchions) that was keeping the cargo tight, catch hold and walk around the port side."

On behalf of the "STRATHALBYN", it is contended that even if it were conceded that the port light was, to some extent, obscured ahead, yet the angle of approach of the "VIRGINIAN" was so great that the light should have been seen, notwithstanding it was hidden from ahead. It is clear that the vessels, on opposite courses, came into practically a head-on collision. Probably, the courses were not over a point off of being directly opposite. This conclusion is at variance with much testimony as to the repeated porting of the helm of the "STRATHALBYN", the change in the "VIRGINIAN'S" course to port and other testimony, expert and otherwise; but all of this is overborne by the evidence of contact left upon the vessels after the collision.

The "STRATHALBYN", at the time of the collision, had a six degree list to starboard. The "VIRGINIAN" had no list. The stem of the "VIRGINIAN" struck across the stem of the "STRATHALBYN" at the 29-foot mark. Above that point, the stem of the "VIRGINIAN" entered the port bow of the "STRATHALBYN". Below that point, the stem did not enter the hull of the "STRATHALBYN", but the starboard bow of the "VIRGINIAN" moved, in contact, aft along the starboard bow of the "STRATHALBYN", the fore foot of each vessel passing by that of the other.

The lower structure of the "STRATHALBYN" being stronger than the upper and able to fend off to starboard the "VIRGINIAN", whose stem and bow remained rigid throughout, the stem of the "VIRGINIAN" above the 29 foot mark, as it entered the upper part of the "STRATHALBYN", instead of following a prolongation of the line of approach and contact, was deflected through to the starboard bow of the "STRATHALBYN", along a line corresponding to that of the latter's starboard bow, below the 29 foot mark. The stem of each vessel is practically perpendicular fore and aft—that is, with no overhang forward, so that there could have been no contact with the "STRATHAL-

BYN'S" port bow above the 29 foot mark before that had with the starboard bow below.

It is, therefore, concluded that the side lights of the "STRATHALBYN" were hidden to the "VIRGINIAN" as she approached, and that this was a proximate cause of the collision. It is not clear whether, but for the obstruction, they could have been seen in time to prevent the collision.

It is contended upon the part of the "STRATHALBYN" that, conceding her side lighs were hidden from ahead, still the "VIRGINIAN" should have seen the masthead light of the "STRATHALBYN" in time to answer her passing signal and avoid a collision. The failure on the "STRATHALBYN'S" part to properly position satisfactory side lights cannot be so excused.

The failure of those on the "VIRGINIAN" to see the masthead light of the "STRATHALBYN", it is contended, is evidence of want of a proper look-out—enough of itself to explain the failure to see the port side light.

It is true the Captain of the "FLYER" made out two white lights on the "STRATHALBYN" which he concluded were her range lights. One of these was probably her masthead light; but, as she had no aft range light, the other was probably a lantern forward about the forecastle. If it had been a port hole light, necessarily on the port side, what the captain took for the range lights would not have opened to as to satisfy him with a passage port to port. This lantern upon the deck would probably be hidden to the "VIRGINIAN", then directly ahead, by the rise forward of the rail of the "STRATHALBYN", as the vessels were approaching head on, the mast head light would appear stationary and, under the circumstances, a failure to distinguish it from shore lights upon Vashon Island will not be held a fault.

In the case of The Oregon (158 U. S., 186), the court found the failure on the part of the Oregon to recognize the Clan Mackenzie's anchor light to be a fault, but further found that the Government light, with which it was claimed the anchor light was confused,

to have been plainly visible, and that it should have been seen, thus preventing any confusion.

Having reached this conclusion, the questions of whether the "STRATHALBYN" should have carried an aft range light, or whether there was other fault in her navigation will not be considered.

The question of fault upon the part of the "VIRGINIAN" remains to be considered. The collision did not occur for three or four minutes after the first whistle of the "STRATHALBYN" to the" VIRGINIAN", during which time the "STRATHALBYN" blew two passing and a danger signal.

On account of the general route of vessels at the point of collision; the signals exchanged between the "STRATHALBYN" and the "FLYER", indicating a passage port to port, and the signals given to the "VIRGINIAN" by the "STRATHALBYN", the "VIRGINIAN" must have known, approximately, the general position and course of the "STRATHALBYN", and when those aboard her could not make out the "STRATHALBYN" or see her lights, they should have reversed her engines not later than the second whistle. That she did so is testified to by witnesses for the "VIRGINIAN" with some detail.

The bell book in the engine room of the "VIRGINIAN" contains the following entries:

| Starboard. | | Port. | |
|---|---|---|---|
| O | 7:57 | O | 7:57 |
| MM | .58 | MM | .58 |
| O | .59 | O | .59 |
| V | 8:09 | V | 8:09 |

Indicating: (O) "stop", 7:57; (MM) "full speed astern", 7:58; (O) "stop" (reversnig), 7:59; (V) "slow ahead" 8:09. The engine room log book of the "VIRGINIAN" contains the following:

> "Stop 7:57; full astern 7:58, stop 7:59, ahead slow 8:09. In collision with S.S. "Strathalbyn" at 7:58 p. m."

Article 28 of the Inland Water rules, provides:

> "When vessels are in sight of one another a steam-vessel under way whose engines are going full speed astern shall indicate that fact by three

short blasts on the whistle". (30 Stat. L., 102).

The three whistles of the "VIRGINIAN" were not given until after the "STRATHALBYN'S" danger signal, less than a minute before the collision.

Captain Beecher, pilot of the "STRATHALBYN", testifies:

"Q. When the Virginian and Strathalbyn came into collision, did you notice whether or not the Virginian was backing?

"A. When he blew his three whistles in answer to my danger signal, I looked along the hull which was very plain, and I called attention that she was just beginning to back; the backwater was just getting back under his starboard quarter."

Captain Crerar of the "STRATHALBYN" also testifies:

"Q. Did you observe whether or not the Virginian was backing at the time you came into collision?

"A. Just before she struck us, Captain Beecher directed my attention to the wash of her water coming up.

"Q. Where did that appear to be?

"A. Around her stern.

"Q. How far forward?

"A. It did not get forward at all, but was just beginning to come up. Captain Beecher remarked, "He is just going astern now."

It is, therefore, concluded that the engines of the "VIRGINIAN" were not reversed until less than a minute before the collision, and that she was clearly in fault for not reversing her engines sooner.

Rule 1, Article 18 of the regulations for Inland Waters for steam craft provides for passing signals for vessels approaching nearly head on. Rule 3 of this article provides:

"If, when steam-vessels are approaching each other, either vessel *fails to understand the course or intention* of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than

four, of the steam-whistle." (30 Stat. L., 100; 2 Fed. Stat. Ann., 179.)

Rule 5 makes provision for signals by vessels nearing river or channel bends where approaching vessels from the opposite direction cannot be seen, and for signals by vessels moving from their docks, when other boats are liable to be moving towards them. Rule 8 provides for the signals to be used when vessels are running in the same direction and the rear one desires to pass the one ahead. Rule 9 provides:

> "The whistle signals provided in the rules under this article, for steam-vessels meeting, passing or overtaking, are never to be used except when steamers are in sight of each other, and *the course and position of each can be determined* in the day time by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mist, falling snow or heavy rainstorms, when vessels cannot so see each other, fog signals only must be given." (30 Stat. L., 101; 2 Fed. Stat. Ann., 179.)

Article 28, set out above, provides for a signal where a steam vessel is going full speed astern and is *in sight* of another vessel.

Rule 3 of the Pilot rules of July 25, 1911, made pursuant to Article 30, Chap. 802, laws of 1890, provides:

> "The signals for *passing,* by the blowing of the whistle shall be given and answered by pilots, in compliance with these rules, not only when meeting head and head or nearly so, but at all times. When the steam vessels are in sight of each other when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port. The whistle signals provided in the rules for steam vessels meeting, passing, or overtaking are never to be used except when steamers are in sight of each other and the course and position of each can be determined in the day time by a sight of the vessel itself or by night by seeing its signal lights. In fog, mist, storms, when vessels cannot so see each other fog signals only must be given."

Under these rules, it is the contention of the "VIR-

GINIAN" that she was excused from giving the danger signal required by Rule 3, Article 18, because she could neither see the "STRATHALBYN" or her lights, and that, under such conditions, Rule 9 forbids the giving of any whistle signal; that, by her silence, the "VIRGINIAN" signaled that the "STRATHALBYN" and her lights could not be seen.

By Rule 3, the danger signal is required when "from any cause" either approaching vessel "fails to understand the *course or intention* of the other". Rule 9 forbids whistle signals, unless "the *course and position* of each (vessel) can be determined", by seeing the vessel in the day time, or its lights by night. The italics are the court's.

It is shown that those navigating the "VIRGINIAN" knew a vessel was "approaching" from ahead; that they knew the vessel's "intention", from her whistle, was to pass the "VIRGINIAN" port to port, but, not being able to either see the "approaching" vessel or her lights, they could not understand her "course". It was, therefore, the duty of the "VIRGINIAN" "immediately" and, certainly, not later than the second whistle of the "STRATHALBYN" to give the danger signal, as required by Rule 3.

Article 28 positively directs three whistles by a steam vessel under way whose engines are going full speed astern, when the vessels are in sight of each other. It does not forbid such signals under all circumstances, unless the vessels are in sight of each other. Rule 9, forbidding the use of signal whistles provided in the rules under Article 18, is limited to those signals provided for "steam-vessels meeting, passing or overtaking."

This quoted expression — if standing alone — it might plausibly be argued, contemplates and includes any situation in which vessels are approaching each other; but an examination of the other rules of Article 18 shows clearly that its application is not so broad.

Rule 1 covers steam-vessels "approaching each other head and head", in which case they shall pass port to port, and the proper signal may be given by either for such passing; "but, if the courses are so far on the

starboard of each other as not to be considered as *meeting* head and head", each shall pass on the starboard of the other and either may give the signal therefor. Rule 8 provides for the passing of vessels running in the same direction and provides for the signals for passage of the vessel astern to port and starboard of the vessel ahead. In this rule the following expressions are used:

> "the vessel which is astern shall desire to *pass* on the right * * * or if she shall desire to *pass* on the left * * * or if the vessel ahead does not think it safe for the vessel astern to *pass* * * * and under no circumstances shall the vessel astern attempt to *pass* the other."

The word "overtake" or "overtaking" is not used in rule 8; but when the word "passing" is used in Rule 9, which rule is only applicable to "steam-vessels" meeting, passing or overtaking"—it, being separated from the context of Rule VIII., becomes too vague and, therefore, it is clear that the word "overtaking" was added as a synonym, or explanatory of the sense in which the word "passing" was used.

The signals forbidden by Rule 9 are clearly those provided for in Rules 3 and 8 only. It is not meant to decide that the duty to give the special danger signal provided for in Rule 8, where the vessels ahead does not think it safe for the vessel astern to attempt to pass, depends upon whether the course and position of each can be determined by seeing the other or her lights.

If the prohibition of Rule 9 extends to the danger signal, provided for by Rule 3, then the danger signal could never be used, except when the vessels were in sight of each other and the *"course and position* of each could be determined." While Rule 3 makes the failure to understand the "course" or intention of the other vessel a prerequisite to using the danger signal.

If the construction of Rule 9 contended for was adopted, no room would be left for the operation of Rule 3, which depends upon the failure to "understand the course and intention of the other" vessel, while Rule 9 forbids signals, except when the *Course and position* of each can be determined.

Doubtless, the inability of competent and vigilant men on the look out on the "VIRGINIAN" to make out either the "STRATHALBYN" or her lights excused the "VIRGINIAN" for not accepting and answering the port to port passing signal of the "STRATHALBYN", provided for by Rule 1, but it did not relieve her of the duty of "immediately"—being unable to understand the course of the "STRATHALBYN"—sounding the danger signal and reversing. If this signal had been given promptly, the "STRATHALBYN" would, doubtless, have reversed her engine a minute or two sooner and the collision have been averted.

It is concluded that the "VIRGINIAN" was clearly in fault for failure to give the danger signal. It is, therefore, unnecessary to consider further the question of other faults charged against the "VIRGINIAN".

*The New York,* 175 U. S., 187;

*Duluth S.S. Co. v. Pittsburg S.S. Co.,* 180 Fed. 656.

Both vessels are, therefore, found to be at fault, and the damage will, therefore, be divided.

(Filed Oct. 10, 1914.)

No. 1036.
CONSOLIDATED CASES.
No. 1052.
DECREE.

The above entitled causes having heretofore been consolidated by order of the above entitled court, on March 18, 1912, and proof having been duly taken on behalf of the respective parties herein and returned to this court, and the cause having been heard and submitted to the Honorable Edward E. Cushman, one of the judges of the above entitled court, upon the pleadings and proof and upon the argument of the proctors for the respective parties herein, and the said court having heretofore, on the 10th day of October, 1914, entered and filed its memorandum decision herein, whereby it was found and so ordered and decreed that the collision mentioned in the pleadings in the above entitled cause was due to fault on the part of both the steamship "Strathalbyn" and the steamship "Virginian,"

and that the damages arising therefrom be divided, and the court having directed that interest at the rate of six per cent. (6%) per annum be allowed and figured upon the items of damage and demurrage, and it appearing to the court that the parties hereto have agreed upon the amount of damages sustained by each of said parties by reason of said collision and have filed stipulations herein covering such damage and have agreed upon the amount of interest due on such damages to the 8th day of November, 1915. THEREFORE, in accordance with the stipulations and agreements of the parties aforesaid,

IT IS HEREBY ORDERED that the damages sustained by the libelant, Strathalbyn Steamship Company, Ltd., a corporation, owner of the steamship "Strathalbyn," by reason of said collision, be, and the same hereby are, assessed as follows:

For damages to the steamship "Strathalbyn" and expenses and charges incident thereto, the sum of Eighty-six Thousand Seventy Two and 05/100 Dollars ($86,072.05), and for interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, the sum of Eighteen Thousand Four Hundred Eight and 03/100 Dollars ($18,408.03); and for demurrage of said steamship "Strathalbyn" Fourteen Thousand One Hundred Forty-seven and 27/100 Dollars ($14,147.27), and for interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, the sum of Three Thousand One Hundred Sixty-six and 62/100 Dollars ($3,166.62); the total of the aforesaid sums amounting to the sum of One Hundred Twenty-one Thousand Seven Hundred Ninety-three and 97/100 Dollars ($121,793.97); and the sum of Six Hundred Twelve and 39/100 Dollars ($612.39) and interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, amounting to the sum of One Hundred Thirty-one and 68/100 Dollars ($131.68), making a total of Seven Hundred Forty-four and 07/100 Dollars ($744.07), which sum the parties hereto have stipulated and agreed, and it is so ordered, shall be charged solely

against the steamship "Virginian" and her owners, said sum being one-half of the amount paid by the Strathalbyn Steamship Company, Ltd., in settlement of personal injury and baggage claims presented by members of the crew of the steamship "Strathalbyn";

For damages sustained by the steamship "Virginian" and the American-Hawaiian Steamship Company, a corporation, as owner of said steamship, the sum of Twenty-five Thousand Two Hundred Fifty-seven and 96/100 Dollars ($25,257.96), and interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, amounting to the sum of Five Thousand Eighty-eight and 32/100 Dollars ($5,088.32); and for demurrage of said steamship "Virginian" the sum of Thirty-one Thousand Nine Hundred Forty-eight and 08/100 Dollars ($31,948.08), and interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, the sum of Seven Thousand Two Hundred Twenty-five and 61/100 Dollars ($7,225.61), making a total of Thirty-nine Thousand One Hundred Seventy-three and 69/100 Dollars ($39,173.69); the whole amounting to the sum of Sixty-nine Thousand Five Hundred Nineteen and 97/100 Dollars ($69,519.97);

For damages sustained by the Strathalbyn Steamship Company, Ltd., a corporation as bailee of a cargo of lumber consisting of 3,563,011 feet and for the use and benefit of the owner and insurers of said cargo, the sum of Six Thousand Eight Hundred Ten and 22/100 Dollars ($6,810.00), and interest thereon at the rate of six per cent. (6%) per annum to the 8th day of November, 1915, amounting to the sum of One Thousand Three Hundred Ninety-one and 55/100 Dollars ($1,391.55), the whole amounting to the sum of Eight Thousand Two Hundred One and 77/100 Dollars ($8,201.77);

AND IT IS FURTHER ORDERED that, in the division of damages, the aforesaid sum of Seven Hundred Forty-four and 07/100 Dollars ($744.07) for loss of sailors' effects and personal injuries shall not be di-

vided but shall be charged and assessed solely against the steamship "Virginian" and her owners.

The costs of the libelant, Strathalbyn Steamship Company, Ltd., a corporation, having been taxed at the sum of Six Thousand Two Hundred Forty-eight and 92/100 Dollars ($6,248.92), and the costs of the cross libelant, American-Hawaiian Steamship Company, having been taxed at the sum of Five Thousand One Hundred Fifty-three and No/100 Dollars ($5,153.00), and the costs of the Strathalbyn Steamship Company, Ltd., as bailee of said cargo, etc., having been taxed at the sum of Fifty-two and 08/100 Dollars ($52.08).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the libelant, Strathalbyn Steamship Company, Ltd., a corporation, do have and recover of and from the American-Hawaiian Steamship Company, a corporation, claimant and cross libelant, and from the American Surety Company, surety on the stipulation filed herein for the release of the steamship "Virginian," one-half of the excess of the amount of damages (excepting the seamen's claims, of Seven Hundred Forty-four and 07/100 Dollars ($744.07) sustained by it, hereinbefore assessed at One Hundred Twenty-one Thousand Seven Hundred Ninety-three and 97/100 Dollars ($121,793.97), over and above the damages sustained by the American-Hawaiian Steamship Company, a corporation, claimant and cross libelant, hereinbefore assessed at the sum of Sixty-nine Thousand Five Hundred Nineteen and 97/100 Dollars ($69,519.97), to-wit, the sum of Twenty-six Thousand One Hundred Thirty-seven Dollars ($26,137), and, in addition thereto, do have and recover of and from the said American-Hawaiian Steamship Company, a corporation, and the American Surety Company, a corporation, surety, as aforesaid, the sum of Seven Hundred Forty-four and 07/100 Dollars ($744.07), and, in addition thereto, one-half of the difference between the taxed costs of the Strathalbyn Steamship Company, Limited, a corporation, amounting to Six Thousand Two Hundred and Forty-eight and

92/100 Dollars ($6,248.92), and the taxed costs of the American-Hawaiian Steamship Company, a corporation, amounting to Five Thousand One Hundred Fifty-three and no/100 Dollars ($5,153.00), viz., the sum of Five Hundred and Forty-seven and 96/100 Dollars ($547.96); the total of all said sums amounting to the sum of Twenty-seven Thousand Four Hundred and Twenty-nine and 03/100 Dollars ($27,429.03); and that execution issue therefor;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, for the use and benefit of the owners and insurers of said cargo, do have and recover of and from the American-Hawaiian Steamship Company, a corporation, claimant of the steamship "Virginian," and the American Surety Company, surety on the stipulation and bond filed in said cause for the release of said vessel, the sum of Eight Thousand Two Hundred One and 77/100 Dollars ($8,201.77) and its costs, taxed herein at the sum of Fifty-two and 08/100 Dollars ($52.08), amounting, in all, to the sum of Eight Thousand Two Hundred Fifty-three and 85/100 Dollars ($8,253.85), and that execution issue therefor provided that execution in favor of the Strathalbyn Steamship Company, Ltd., a corporation now only issue for the amount decreed it, to-wit the sum of Twenty-seven Thousand Four Hundred Twenty-nine and 03/100 Dollars ($27,429.03) less one half the amount decreed in favor of Strathalbyn Steamship Company, Ltd., a corporation as bailee, that is less the sum of Four Thousand One Hundred Twenty-six and 92/100 Dollars ($4,126.92) and that execution on such deducted amount be stayed until the time for an appeal herein has expired, that in case such appeal is not taken by Claimant and Cross Libelant, execution then to issue for the remainder, that in case of such appeal, execution be further stayed until the filing of the Mandate from the Appellate Court, then to issue unless, upon appeal, Claimant and cross-libelant has prevailed, obtaining a decree freeing it from responsibility therefor upon pay-

ment by said Claimant and cross-libelant to the Strathalbyn Steamship Company, a corporation, as bailee, of the amount herein decreed, execution by Strathalbyn Steamship Company, Ltd., a corporation, for such deducted amount to-wit the said sum of Four Thousand One Hundred Twenty-six and 92/100 Dollars ($4,126.92) shall be perpetually stayed, or judgment satisfied. Interest is allowed at the rate of six per cent. (6%) per annum during any delay the parties hereto having stipulated that interest in this decree shall run from the 8th day of November, 1915,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this judgment shall bear interest from the 8th day of November, 1915, at the rate of six per cent. (6%) per annum until paid.

Done in open court this 26th day of November, 1915.

EDWARD E. CUSHMAN, Judge

(Filed Nov. 26, 1915.)

## NOTICE OF FILING FINAL DECREE.

To STRATHALBYN STEAMSHIP COMPANY, a corporation, Libelant in Cause No. 1036, and to
HUFFER & HAYDEN, its Proctors herein;

To STRATHALBYN STEAMSHIP COMPANY, a corporation, as bailee of a cargo, etc., Libelant in Cause No. 1052, and to
BALLINGER, BATTLE, HULBERT & SHORTS, its Proctors herein:

YOU, AND EACH OF YOU, WILL HEREBY TAKE NOTICE that the final decree of the above court in the above entitled Consolidated Causes was made and filed herein on the 26th day of November, 1915.

DATED at Seattle, Washington, November 26th, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for American-Hawaiian Steamship Company, Claimant and Cross-Libelant.

Service of within Notice and receipt of a copy thereof admitted, this 26th day of November, 1915.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship Co., Ltd.,
BALLINGER, BATTLE, HURLBURT & SHORTS,
Proctors for Strathalbyn Steamship Company, Ltd., as bailee of cargo.

(Filed Dec. 4, 1915.)

No. 1036.

CONSOLIDATED CASES.

No. 1052.

NOTICE OF APPEAL.

To STRATHALBYN STEAMSHIP COMPANY, a corporation, Libelant in Cause No. 1036, and to NATIONAL SURETY COMPANY, a corporation, Stipulator for release of the Steamship "Strathalbyn," and to HUFFER & HAYDEN, Proctors for said Libelant; and

To STRATHALBYN STEAMSHIP COMPANY, a corporation, as bailee of a Cargo, etc., Libelant in Cause No. 1052, and to BALLINGER, BATTLE, HULBERT, & SHORTS, Proctors for said Libelant; and

To the Clerk of the Above Court:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, claimant and cross-libelant in Cause No. 1036,, and claimant in Cause No. 1052, hereby appeals from the final decree made and entered in the above Consolidated Causes on the 26th day of November, 1915, and from each and every part of said decree, to the next United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in and for said Circuit at the City of San Francisco, State of California.

DATED at Seattle, Washington, November 26th, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for American - Hawaiian Steamship Company, Claimant and Cross-Libelant.

(Filed Nov. 26, 1915.)

Due service of the foregoing notice of appeal, after the filing of the same in the office of the Clerk of the above entitled court, is hereby admitted this 26th day of November, 1915.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship Company, Libelant,

BALLINGER, BATTLE, HURLBURT & SHORTS,
Proctors for Strathalbyn Steamship Company, as bailee of a cargo above Libelant.

In the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

No. 1036.

CONSOLIDATED CASES

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Libelant,

vs.

Steamship "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Cross Libelant,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant.

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NO. 1052.

CITATION ON APPEAL.

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libelant,

vs.

Steamship "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,
AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Petitioner,
Steamship "STRATHALBYN," her tackle, apparel, furniture, etc., Respondent,
STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant.

United States of America, Western District of Washington.—ss.

THE PRESIDENT OF THE UNITED STATES

To Strathalbyn Steamship Company, Ltd., a corporation, libelant in Cause 1036, and to Messrs. HUFFER & HAYDEN, its proctors herein; and to Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo, etc., libelant in Cause 1052, and to Ballinger, Battle, Hulbert & Shorts, its proctors herein, GREETING:

YOU AND EACH OF YOU ARE HEREBY CITED AND ADMONISHED to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to an appeal to the said court duly filed in the office of the Clerk of the United States District Court for the Western District of Washington, Southern Division, wherein the said American-Hawaiian Steamship Company, a corporation, is appellant, and you, the said Strathalbyn Steamship Company, Ltd., a corporation, and Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo etc., are appellees, then and there to show cause, if any there be, why the decree of the United States District Court for the Western District of Washington, Southern Division, in the above entitled consolidated causes, dated November 26, 1915, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States

of America, this 4th day of December, 1915.

EDWARD E. CUSHMAN,
Judge of the United States District Court for the Western District of Washington.

(SEAL OF U. S. DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON.)

Due service of the within citation, after the filing of the same in the office of the Clerk of the above entitled court, is hereby admitted on this 4th day of December, 1915.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship Company, Ltd., a corporation,
McCUTCHEON, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Strathalbyn Steamship Company, Ltd., a corporation, as bailee of cargo, etc.

(Endorsed):—

"Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Dec. 4, 1915.
FRANK L. CROSBY, Clerk.
By E. C. Ellington, Deputy.

NO. 1036.
NO. 1052.

ORDER FIXING AMOUNT OF BOND ON APPEAL STAYING EXECUTION.

A decree having been signed and entered in the above entitled Consolidated Causes by the above Court, on the 26th day of November, 1915, wherein and whereby it was decreed that the collision mentioned in the pleadings herein resulted from the mutual fault of the Steamship "Strathalbyn" and the Steamship "Virginian", and that the damages resulting therefrom should be divided, and upon such division decreeing that the Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, bailee, Libelant in Cause 1052, should have and recover from American-Hawaiian Steamship

Company, claimant, the sum of Eight Thousand Two Hundred One and 77/100 Dollars ($8,201.77), and its costs amounting to Fifty-two and 08/100 Dollars ($52.08), and further decreeing that Strathalbyn Steamship Company, Ltd., a corporation, Libelant in Cause No. 1036, have and recover from said American-Hawaiian Steamship Company, Claimant and Cross-Libelant, the sum of Twenty-seven Thousand Four Hundred and Twenty-nine and 03/100 Dollars ($27,429.03), and providing that execution in favor of said Strathalbyn Steamship Company, Ltd., a corporation, should now only issue for said amount, less the sum of Four Thousand One Hundred Twenty-six and 92/100 Dollars ($4,126.92), being one-half the amount decreed in favor of the Strathalbyn Steamship Company, as bailee, and that execution for such deducted amount be stayed until time for appeal has expired, or, in case of appeal, until mandate of the Appellate Court is filed in this Court, unless Claimant and Cross-Libelant prevails upon such appeal; and further providing that upon payment to the Strathalbyn Steamship Company, Ltd., a corporation, as bailee of the full amount decreed to it, execution in favor of Strathalbyn Steamship Company, Ltd., a corporation, for such deducted amount be perpetually stayed or judgment satisfied; and the said American-Hawaiian Steamship Company, claimant and cross-libelant in Cause No. 1036, and claimant in Cause No. 1052, having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, by filing in the office of the Clerk of the above entitled Court and serving on proctors for the adverse parties in the above causes, a notice, signed by it, that it appeals to the United States Circuit Court of Appeals for the Ninth Circuit from said decree, and said American-Hawaiian Steamship Company, claimant and cross-libelant in Cause No. 1036, and claimant in Cause No. 1052, desiring to stay the execution of the said decree, and having by its proctors of record moved this Court to fix by order the amount of the bond which it should file as a bond on appeal staying the execution of said decree, and it appearing that said claimant and cross-libelant

in Cause No. 1036, has heretofore given and filed a bond in said cause in the sum of One Hundred and Seventy-five Thousand Dollars ($175,000) for the release of said Steamship "Virginian," and that said claimant in Cause No. 1052 has heretofore given and filed a bond in said cause in the sum of Ten Thousand Dollars ($10,000) for the release of said steamship "Virginian," and the Court being of the opinion that a further bond in the sum of One Thousand and no/100 Dollars ($1,000.00) is sufficient upon such appeal, as a cost bond and to operate as a supersedeas to stay execution of said decree in the above consolidated causes;

NOW, IT IS HEREBY ORDERED and DECREED that the appeal bond to be given on such appeal be and the same is hereby fixed at the sum of One Thousand and no/100 Dollars ($1,000.00), which bond shall operate as a supersedeas in said cause.

Done in open Court this 26th day of November, 1915.

EDWARD E. CUSHMAN,
Judge.

(Filed Dec. 4, 1915.)

No. 1036.
No. 1052.
CONSOLIDATED CASES.
BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, American-Hawaiian Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as principal, and American Surety Company, of New York, a corporation duly organized under the laws of the State of New York and authorized to transact business as surety within the Western District of the State of Washington, as surety, are held and firmly bound unto Strathalbyn Steamship Company, Ltd., a corporation, libelant above named in Cause 1036, and unto Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, etc., libelant above named in Cause No. 1052, in the sum of One Thousand and

no/100 Dollars ($1,000), lawful money of the United States, to be paid to said Strathalbyn Steamship Company, Ltd., a corporation, libelant in Cause 1036, and to Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, libelant in Cause 1052, for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Seattle this 29th day of November, 1915.

WHEREAS, the said American-Hawaiian Steamship Company, a corporation, principal herein, has lately appealed to the next United States Circuit Court of Appeals for the Ninth Circuit from the final decree made and entered in the above entitled court on the 26th day of November, 1915, in the above entitled consolidated causes; and

WHEREAS, the said American-Hawaiian Steamship Company, a corporation, principal herein and claimant and cross-libelant in the above entitled consolidated causes, desires, during the process of such appeal, to stay the execution of said decree of the above entitled court in the said consolidated causes; and

WHEREAS, the said court has heretofore fixed the amount of the bond on such appeal in order to stay the execution of said decree;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the above named American-Hawaiian Steamship Company, a corporation, appellant in said cause, and principal herein, shall prosecute said appeal to effect and pay all costs which may be awarded against it as such appellant, if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled consolidated causes or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the above entitled court, then this obligation shall be void; otherwise the same to be and remain in full force and effect.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY,
By C. K. Magill, Agent.
AMERICAN SURETY COMPANY OF NEW YORK,
By Edward J. Lyons, Resident Vice President.
S. H. Melrose, Resident Assistant Secretary.

The foregoing bond approved as to form, amount and sufficiency of surety, and receipt of a copy of said bond acknowledged this 30th day of November, 1915.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship Co.
BALLINGER, BATTLE, HURLBURT & SHORTS,
Proctors for Strathalbyn Steamship Company, as bailee of cargo, etc.

The foregoing bond and the sufficiency of the surety thereon is on this 4th day of December, 1915, approved as an appeal and supersedeas bond.

EDWARD E. CUSHMAN,
United States District Judge.

(Filed Dec. 4, 1915.)

## NOTICE OF FILING BOND ON APPEAL.

To STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Libelant in Cause No. 1036 and Claimant in Cause 1052, and

To HUFFER & HAYDEN, its Proctors herein, and

To STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation as bailee of cargo, Libelant in Cause No. 1052, and

To BALLINGER, BATTLE, HULBERT & SHORTS, its proctors herein:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the 4th day of December, 1915, the American-Hawaiian Steamship Company, claimant and cross-libelant in Cause No. 1036, and Claimant in Cause No. 1052, and appellant, filed a bond for costs and damages on appeal herein in the sum of Two Hundred and Fifty Dollars ($250.00), and a supersedeas bond for stay of execution in the sum of Seven Hundred and Fifty Dollars ($750.00), both in one bond, pursuant to order of the above Court, in the office of the Clerk of the United States District Court for the Western District

of Washington, Southern Division, at Tacoma, a copy of which bonds is herewith served upon you. You are further notified that the name of the surety on said bonds is American Surety Company of New York, which said surety has an office and resident agent in the Hoge Building, Seattle.

Dated at Seattle, Washington, this 4th day of December, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Claimant, Cross-Libelant and Appellant.

(Acceptance of service.)
(Filed Dec. 9, 1915.)

No. 1036.
No. 1052.

ASSIGNMENT OF ERRORS.

Now comes the AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, claimant and cross-libelant in Cause No. 1036, and claimant in Cause No. 1052, and appellant herein, and says that in the records, opinions, decisions, decree and proceedings in the above consolidated causes, there is manifest and material error, and said appellant now makes, files and presents the following ASSIGNMENT OF ERRORS on which it relies, towit:

1. That the Court erred in finding and decreeing that the collision mentioned in the pleadings herein between the S. S. "Virginian" and the S. S. "Strathalbyn", resulted from or was caused by the mutual fault of said S. S. "Virginian" and said S. S. "Strathalbyn," and in refusing to find and decree that said collision resulted from the sole fault and negligence of the said S. S. "Strathalbyn".

2. That the Court erred in finding and decreeing that in said causes the damages resulting from the collision mentioned in the pleadings should be divided.

3. That the Court erred in refusing to allow, award and decree to claimant and cross-libelant in Cause No. 1036 the full amount of damages sustained by it as the result of the collision between the said S. S. "Virginian" and the said S. S. "Strathalbyn", together with

interest thereon, and its costs in said suit, as prayed for in its said cross-libel.

4. That the Court erred in finding that the engines of the "Virginian" were not reversed until less than a minute before the collision.

5. That the Court erred in finding that the "Virginian" was in fault for not reversing her engines sooner.

6. The Court erred in holding that the failure of the "Virginian" to reverse her engines sooner in any way caused or contributed to the collision between the "Virginian" and the "Strathalbyn".

7. The Court erred in finding that the "Virginian" should have blown a danger signal.

8. The Court erred in holding that the failure of the "Virginian" to give a danger signal caused or in any way contributed to the collision between the "Virginian" and the "Strathalbyn".

9. The Court erred in refusing to hold that the burden of proof was upon the "Strathalbyn" to show that her fault was not the sole cause of said collision.

10. The Court erred in allowing the "Strathalbyn" Steamship Company, Ltd., libelant in Cause No. 1036, interest on its damages and costs in said suit.

11. The Court erred in allowing the Strathalbyn Steamship Company, Ltd., as bailee of cargo, libelant in Cause No. 1052, interest on its damages and costs in said suit.

12. The Court erred in refusing to dismiss Case No. 1052.

13. The Court erred in allowing and decreeing that the Strathalbyn Steamship Company, Ltd., as bailee of cargo, libelant in Cause No. 1052, recover from American-Hawaiian Steamship Company, claimant, the full amount of its damages, or any portion thereof.

14. The Court erred in allowing the Strathalbyn Steamship Company, Ltd., libelant in Cause No. 1036, one-half of the difference between its excess damages over the damages sustained by claimant and cross-libelant, and refusing to deduct therefrom one-half of the amount decreed to the "Strathalbyn Steamship Com-

pany, Ltd., as bailee of cargo, against the American-Hawaiian Steamship Company, claimant in Cause No. 1052.

15. The Court erred in decreeing and allowing immediate execution against American-Hawaiian Steamship Company and its surety for the amount decreed in favor of libelant in Cause No. 1036, towit, the sum of Twenty-seven Thousand four hundred twenty-nine and 03/100 Dollars ($27,429.03), less one-half the amount decreed in favor of libelant in Cause No. 1052, against the American-Hawaiian Steamship Company, towit, $4,126.92.

16. The Court erred in holding that execution on said deducted amount of $4,126.92 should be stayed until time of appeal had expired, and that in case such appeal was not taken by said claimant and cross-libelant, execution should then issue for the remainder.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Claimant and Cross-Libelant.

(Filed Dec. 4, 1915.)

No. 1036.
No. 1052.

STIPULATION AND ORDER AS TO RECORD.

IT IS HEREBY STIPULATED, by and between the parties hereto, through their respective proctors, that all exhibits introduced in the above entitled consolidated causes and in the depositions taken in said causes, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as original exhibits with the Apostles on Appeal; and

IT IS FURTHER STIPULATED that in preparing said Apostles on Appeal, all captions, except the name of the paper and the number of the cause, except where specially noted in the Præcipe for Apostles on Appeal, and all verifications and all certificates of the United States Commissioner to testimony of witnesses, and all certificates of the Notary Public or other officer or official to all depositions taken, and also stipulation with reference to taking such depositions, may be omitted; and that all stipulations as to damages and testi-

mony as to damages, whether taken before a United States Commissioner, Notary Public or other official, may be omitted; and, further, that all endorsements, except to show the name of the paper and the date of filing, shall be eliminated, and all acceptances of service of papers shall be omitted.

BOGLE, GRAVES, MERRITT & BOGLE,
Protors fcor American-Hawaiian Steamship Company, a corporation, claimant and cross libelant in Cause 1036 and claimant in Cause 1052.

HUFFER & HAYDEN,
Proctors for Strathalbyn Steamship Company, Ltd., a corporation, Libelant and Claimant in Cause 1036 and Claimant in Cause 1052.

BALLINGER, BATTLE, HURLBURT & SHORTS,
Proctors for Strathalbyn Steamship Company, Ltd., a corporation, as bailee, etc., Libelant in Cause 1052.

Upon reading the foregoing stipulation as to the record on appeal in this case, IT IS ORDERED that said record be so prepared and filed.

EDWARD E. CUSHMAN,
Judge.

(Filed Nov. 26, 1915.)

NO. 1036 AND 1052—CONSOLIDATED CASES.
PRAECIPE FOR APOSTLES ON APPEAL.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare, print and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on Appeal in the above entitled cause, pursuant to the rules of said Circuit Court of Appeals, upon the appeal heretofore perfected in said court, and include in said Apostles the following pleadings, proceedings and papers on file, to-wit:

1. All those papers required by Section 1 of paragraph 1 of Rule 4 of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit:

2. All the pleadings with the exhibits annexed thereto, omitting therefrom all verifications, endorsements, acceptances of service, and captions, except the name of the paper, date of filing and number of the cause, except as herein specially noted, including the following, to-wit:

(a) Libel of Strathalbyn Steamship Company, Ltd., in Cause No. 1036, filed January 15, 1912, including full caption.

(b) Answer and Cross-Libel of American-Hawaiian Steamship Company, in Cause No. 1036, filed January 19, 1912.

(c) Answer of Strathalbyn Steamship Company, Ltd., to Cross-Libel in Cause No. 1036, filed February 11, 1912.

(d) Libel of Strathalbyn Steamship Company, Ltd., as bailee of cargo, etc., in Cause No. 1052, filed February 8, 1912, including full caption.

(e) Motion of American-Hawaiian Steamship Company in Cause No. 1052, filed February 26, 1912.

(f) Memorandum Decision in Cause No. 1052, filed March 7, 1912

(g) Order consolidating Causes 1036 and 1052, on March 18, 1912, with full caption.

(h) Petition of American-Hawaiian Steamship Company in Cause No. 1052, on March 13, 1912.

(i) Stipulation as to answer of American-Hawaiian Steamship Company in Cause No. 1052, on December 4, 1915.

(j) Answer of Strathalbyn Steamship Company, Ltd., to Petition in Cause No. 1052, on March 20, 1912.

(k) Answer of Strathalbyn Steamship Company, Ltd., to Libel in Cause No. 1052, on March 18, 1914.

3. All the testimony and other proofs adduced in said causes, or either of them, including testimony taken at the trial and before the United States Commissioner and filed herein, and all depositions taken

by either party and admitted in evidence; excepting and omitting therefrom all testimony relating solely to damages, such testimony being:

Testimony of George T. Crerar, J. Purdy and J. Sandelands, taken before U. S. Commissioner March 19, 1912, and filed December 10, 1912.

Portion of depositions of George T. Crerar, John Purdie and John B. Bodie, taken before U. S. Consul, Glasgow, Scotland, March 6, 1913, and filed March 29, 1913, as follows:

Crerar's deposition, direct-interrogatories 26 to 52, inclusive, and answers thereto, and cross-interrogatories 66 to 71, inclusive, and answers thereto.

Purdie's deposition, direct-interrogatories 28 to 34, inclusive, and answers thereto.

John B. Bodie's deposition—all of said deposition.

Deposition of V. H. Thun, taken before Alan Fox, Notary Public, New York City, on May 10, 1915, and filed June 5, 1915.

All exhibits introduced by either party and admitted in evidence, viz:

Libelant's Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "S," "T," attached to testimony taken before U. S. Commissioner and filed herein December 10, 1912; "U1" and U2" attached to deposition of F. Walker, taken October 28, 1912; "V1," "V2" and "V3" attached to deposition of Erisman, taken December 9, 1912; "S1," "S2," "S3," "S4," "S5," "S-S" and "W" attached to deposition of George T. Crerar et al., taken at Glasgow, Scotland, March 6, 1913; "X13," "X14," "X15," "X16," "X17," "X18," "X19," attached to deposition of C. P. M. Jack, taken at New York City, January 14, 1913; "C-V-1" to "C-V-16" inclusive, attached to deposition of John Cameron, taken at Victoria, B. C., September 30, 1913; "Z1" and "Z2" attached to deposition of C. W. Sprague, taken April 25, 1914; "F. A. G. 1" to "F. A. G. 6," inclusive, attached to deposition of F. A. Gardner, taken December 4, 1913; "McIntyre A,"

"Leach A," and "Leach B" attached to testimony taken before U. S. Commissioner and returned and filed herein May 28, 1914; "Libelant's Ex." 6, 8, 9, 10, 11, 13, 14, 15, 18, 19, 20," "Libelant's Exhibit Identification 1, 2, 3, 4, 5" and "329-E," "330-E" and "Strathalbyn" 1 to 9 inclusive, all attached to deposition of David W Dickie, taken April 10, 1914. "Lee-1," "Lee-2-A" and "Lee 2" to "Lee 18" inclusive attached to testimony taken before U. S. Commissioner and filed herein May 28, 1914; Stipulation with Strathalbyn's Charter Party and Bill of Lading attached, dated October 28, 1915, filed November 1, 1915, and Stipulation with Strathalbyn's log log-book and pilot-rules attached, filed May 29, 1914. Respondent's and Claimant's Exhibits 1, 2, 3 and 4, attached to testimony returned by U. S. Commissioner and filed herein December 10, 1912; "5-1" attached to deposition of A. E. Draper taken Sept. 20, 1912; "5-2," "5-3," "5-4," "5-5" attached to deposition of F. Walker, taken October 28, 1912; "5-6" attached to deposition of M. C. Erisman, taken December 9, 1912; "Caper Exs. A, B, C, D, E, F, G," attached to deposition of R. E. Capers, taken December 24, 1912; "Hofstetter No. 1," "Leach No. 2," "Beaumont No. 1 and 2" and "Lee A" attached to testimony taken before U. S. Commissioner and returned May 28, 1914.

and all of these to be sent up to said United States Circuit Court of Appeals as original exhibits, and where any of said exhibits are attached to interrogatories or depositions, the same are to be detached therefrom and sent up to said Court as original Exhibits, all in accordance with order of the above Court entered and filed November 26th, 1915.

All the exhibits introduced by either party, except those enumerated above, relate solely to damages and are not to be either printed or sent up to said Court.

4. Memorandum Decision, filed October 10, 1914.
5. Final Decree, filed November 26, 1915.
6. Notice of filing final decree.

7. Notice of Appeal with admission of service thereof, filed November 26, 1915.

8. Order fixing amount of Bond on Appeal.

9. Bond on Appeal and Notice of filing of Bond on Appeal.

10. Citation on Appeal.

11. Stipulation and Order as to Record on Appeal and transmitting original exhibits.

12. Assignment of Errors.

13. This Praecipe for Apostles on Appeal.

DATED at Seattle, Washington, this 1st day of December, 1915.

BOGLE, GRAVES, MERRITT, BOGLE,
Proctors for American-Hawaiian Steamship Company, Claimant and Cross-Libelant.

(Filed Dec. 4, 1915.)

In the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

NO. 1036, NO. 1052—CONSOLIDATED CASES.

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Libelant, Appellee and Cross-Appellant,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Cross-Libelant, Appellant and Cross-Appellee,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant and Cross-Appellant,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libelant and Appellee and Cross-Appellee,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corpor-

ation, Claimant and Petitioner, and Appellant and Cross-Appellee,

STEAMSHIP "STRATHALBYN," her tackle, apparel, furniture, etc., Respondent,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, Appellee and Cross-Appellant,

ORDER EXTENDING TIME FOR TRANSCRIPT.

For good cause shown,

IT IS HEREBY ORDERED that the time within which the record on appeal in the above entitled cause may be filed is hereby extended to and including the 7th day of January, 1916.

December 27, 1915.

EDWARD E. CUSHMAN,
District Judge.

(Filed Dec. 27, 1915.)

CERTIFICATE OF CLERK U. S. DISTRICT COURT AS TO TRANSCRIPT OF RECORD AS REQUIRED BY PRAECIPE OF APPELLANT.

United States of America, Western District of Washington, ss.

I, FRANK L. CROSBY, Clerk of the United States District Court of the Western District of Washington, do hereby certify and return that the foregoing pages numbered from 1 to 1456 inclusive, contain a full, true and correct transcript of the record on appeal in the case of STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, vs. STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture and engines, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant, and STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as Bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libellant, vs. STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant, and Steamship "STRATHALBYN," her tackle, apparel, furni-

ture, etc., STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, lately pending in this court, as required by the praecipe of Messrs. Bogle, Graves, Merritt & Bogle, solicitors for the appellant, filed in said cause, as the originals thereof appear on file in this court, at the City of Tacoma, in the District aforesaid.

I further certify and return that I hereto attach and herewith transmit the original citation of appellant and Order extending time for transcript on appeal.

I further certify that I am transmitting under separate cover and certificate the original exhibits in these causes as required by the stipulation of counsel filed herein.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office, by and on behalf of the appellant, by its solicitors, Messrs. Bogle, Graves, Merritt & Bogle, for making the record, certificate and return to the United States Circuit Court of Appeals, for the Ninth Circuit, in the above entitled cause, to-wit:

| | |
|---|---|
| Clerk's fees (Sec. 828 R. S. U. S.) for making record, certificate and return, 4926 folios at 15c each | $738.90 |
| Certificate of Clerk to transcript, 4 fo. at 15c | .60 |
| Seal to said certificate to transcript | .20 |
| Certificate and seal to appellant's exhibits, 2 fo. | .50 |
| Certificate and seal to appellees' exhibits, 2 fo. | .50 |
| Statement of cost of printing appellant's transcript of record, collected and paid by the solicitors for appellant, Messrs. Bogle, Graves, Merritt & Bogle | 1260.55 |

ATTEST MY HAND AND THE SEAL OF THIS COURT, this 3rd day of January, 1916.

(Seal) FRANK L. CROSBY, Clerk.

By E. C. ELLINGTON, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Libelant, Appellee and Cross-Appellant,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Cross-Libelant, Appellant and Cross-Appellee,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant and Cross-Appellant,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libelant and Appellee and Cross-Appellee,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Petitioner, and Appellant and Cross Appellee,

STEAMSHIP "STRATHALBYN," her tackle, apparel, furniture, etc., Respondent,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, Appellee and Cross-Appellant.

TRANSCRIPT OF RECORD

Of Cross Appeal From the United States District Court for the Western District of Washington, Southern Division.

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Libelant, Appellee and Cross-Appellant,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Cross-Libelant, Appellant and Cross-Appellee,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant and Cross-Appellant,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libelant and Appellee and Cross-Appellee,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Petitioner, and Appellant and Cross-Appellee,

STEAMSHIP "STRATHALBYN," her tackle, apparel, furniture, etc., Respondent,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, Appellee and Cross-Appellant.

NOS. 1036-1052. CONSOLIDATED CASES.

NOTICE OF APPEAL.

To AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant and Cross-Libelant in Cause No. 1036, and to AMERICAN SURETY COMPANY OF NEW YORK, a corporation, surety for release of the Steamship "Virginian," and to the AMERICAN-HAWAIIAN STEAMSHIP COMPANY as Claimant and Petitioner in Cause 1052, and to the AMERICAN SURETY COMPANY OF NEW YORK, a corporation, stipulator for the release of the Steamship "Virginian," and to BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for said Claimant and Cross-Libelant; and

To Strathalbyn Steamship Company, a corporation, as bailee of a Cargo, etc., Libelant in Cause No. 1052, and to Ballinger, Battle, Hulbert & Shorts, Proctors for said Libelant; and

To the Clerk of the Above Court:

You and Each of You Will Please Take Notice that the Strathalbyn Steamship Company, Ltd., a corporation, libelant and claimant in Cause No. 1036, and claimant in Cause No. 1052, hereby appeals from the final decree made and entered in the above Consolidated Causes on the 26th day of November, 1915, and from each and every part of said decree, to the next United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in and for said Circuit at the City of San Francisco, State of California.

Dated at Tacoma, Washington, December 23rd, 1915.

Huffer & Hayden,
Proctors for Strathalbyn Steamship Company, Ltd., Libelant and Claimant.

(Filed Dec. 23, 1915.)

ASSIGNMENTS OF ERROR.

Comes now the STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, libelant and claimant in cause No. 1036 and claimant in cause No. 1052 and cross-appellant herein and hereby assigns errors in the records, opinion, decision, decree and proceedings of the District Court in the above consolidated causes as follows:

I.

That the court erred in finding and decreeing that the collision mentioned in the pleadings herein between the steamship "Virginian" and the steamship "Strathalbyn" resulted from, or was caused by the mutual fault of the steamship "Virginian" and said steamship "Strathalbyn," and in refusing to find and decree that said collision resulted from the sole fault and negligence of the steamship "Virginian."

II.

That the court erred in finding and decreeing that, in said causes, the damages to the steamer, demurrage and layup expenses and matters of such nature resulting from the collision mentioned in the pleadings, and costs, should be divided.

III.

That the court erred in refusing to allow, award and decree to the Strathalbyn Steamship Company, Ltd., a corporation, libelant and claimant in cause No. 1036, the full amount of damages sustained by it as the result of the collision between said steamer and the steamer "Virginian," together with interest thereon and its costs of said suit as prayed for in the libel herein.

IV.

That the court erred in finding the lights of the steamer "Strathalbyn" were not properly set and burning and visible to the "Virginian."

V.

That the court erred in finding the angle of the approach of the "Strathalbyn" and the "Virginian" was such that the red light of the "Strathalbyn" was not visible to the "Virginian," and that it was hidden from the "Virginian" during the time the "Strathalbyn" was signalling to the "Virginian."

VI.

That the court erred in giving more weight to the negative testimony of the witnesses that they did not see the lights of the "Strathalbyn" than to the positive testimony of witnesses that the lights of the "Strathalbyn" were visible from directly ahead prior to, at the time of, and after the collision.

VII.

That the court erred in finding that the stanchions holding the cargo on the "Strathalbyn's" forward deck did not tumble home and lean inboard from a perpendicular position, and that the port light could not be seen by sailors aboard the "Strathalbyn" from the deck of the "Strathalbyn" through the spaces between the stanchions.

VIII.

That the court erred in finding that the stanchions holding said deck cargo of lumber on the "Strathalbyn" leaned outboard slightly instead of inboard at the time of the collision.

IX.

That the court erred in finding that the stanchions obstructed the rays of the port light of the "Strathalbyn" so that the same could not have been seen on the "Virginian" from the angles at which the steamers were approaching during the time the "Strathalbyn" was signalling to the "Virginian."

X.

That the court erred in finding that the "Flyer," in overhauling and passing the "Virginian" at Pully Point, when abeam, was two hundred (200) yards away from her.

XI.

That the court erred in finding that, because the rays of light from the side light shone upon the stanchions holding the forward deck cargo on the "Strathalbyn," the light was so obstructed at a point directly ahead that it was not visible from the "Virginian."

XII.

That the court erred in finding that the "Strathalbyn" and "Virginian" were on like courses and struck head and head at the time of the collision.

XIII.

That the court erred in finding the "Virginian" was not at fault in failing to observe the mast-head light of the "Strathalbyn" during the time the "Strathalbyn" was signalling to the "Virginian."

XIV.

That the court erred in finding and decreeing that the Strathalbyn Steamship Company, Ltd., as bailee of the cargo of lumber recover more than one-half of the cargo damage and costs in the consolidated causes.

XV.

That the court erred in decreeing that the Strathalbyn Steamship Company, Ltd., libelant in cause No. 1036, be required to recoup the American-Hawaiian Steamship Company, claimant and cross-libelant in said

cause 1036, for one-half of the cargo damage and costs decreed to be due the Strathalbyn Steamship Company, Ltd., as bailee, in cause No. 1052.

XVI.

That the court erred in failing to find and decree that the charter party made and entered into between the charterer of the "Strathalbyn" and cargo owners saved and protected the "Strathalbyn" against the claim of the charterer and cargo owner from any loss or damage resulting from collision.

Dated, Tacoma, Washington, December 23, 1915.

HUFFER & HAYDEN,

Proctors for Strathalbyn Steamship Company, Ltd., a Corporation, Libelant and Claimant.

(Filed Dec. 23, 1915.)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Strathalbyn Steamship Company, Ltd., a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, as principal, and United States Fidelity & Guaranty Company, a corporation duly organized under the laws of the State of Maryland and authorized to transact business, as surety, within the Western District of the State of Washington, as surety, are held and firmly bound unto American-Hawaiian Steamship Company, a corporation, claimant above named in Cause 1036, and unto Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, etc., libelant above named in Cause No. 1052, in the sum of One Thousand and no/100 Dollars ($1000), lawful money of the United States, to be paid to said American-Hawaiian Steamship Company, a corporation, libelant in Cause 1036, and to Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, libelant in Cause 1052, for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Tacoma this 23rd day of December, 1915.

WHEREAS, the said Strathalbyn Steamship Company, Ltd., a corporation, principal herein, has lately cross appealed to the next United States Circuit Court of Appeals for the Ninth Circuit from the final decree made and entered in the above entitled court on the 26th day of November, 1915, in the above entitled consolidated causes; and

WHEREAS, the said Strathalbyn Steamship Company, Ltd., a corporation, principal herein and libelant and claimant in the above entitled consolidated causes, desires, during the process of such appeal, to stay the execution of said decree of the above entitled court in the said consolidated causes; and,

WHEREAS, the said court has heretofore fixed the amount of the bond on such appeal in order to stay the execution of said decree;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the above named Strathalbyn Steamship Company, Ltd., a corporation, cross-appellant in said cause, and principal herein, shall prosecute said appeal to effect and pay all costs which may be awarded against it as such cross-appellant, if the cross appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled consolidated causes or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the above entitled court, then this obligation shall be void; otherwise the same to be and remain in full force and effect.

STRATHALBYN STEAMSHIP COMPANY, LTD.,
By HUFFER & HAYDEN, By W. H. HAYDEN,
(Seal.) Its Proctors and Attorneys.
UNITED STATES FIDELITY & GUARANTY COMPANY,
a Corporation,
By HARRY C. MILLER, Attorney in Fact.

(5c rev. stamps.) Stamp tax paid by Company.

The foregoing bond approved as to form, amount and sufficiency of surety, and receipt of a copy of said

bond acknowledged this 23rd day of December, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for American-Hawaiian Steamship Company.
McCUTCHEN, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Strathalbyn Steamship Company, as Bailee of Cargo, Etc.

The foregoing bond and the sufficiency of the surety thereon is on this 23rd day of December, 1915, approved as an appeal and supersedeas bond.

EDWARD E. CUSHMAN,
United States District Judge.

(Filed Dec. 23, 1915.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

NO. 1036—CONSOLIDATED CASES.
NO. 1052—CITATION ON APPEAL.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation, Libelant, Appellee and Cross-Appellant,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines, Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,
Claimant and Cross Libelant, Appellant and Cross-Appellee,

STRATHALBYN STAMSHIP COMPANY, LTD., a corporation,
Claimant and Cross-Appellant,

STRATHALBYN STAMSHIP COMPANY, LTD., a corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo,
Libelant and Appellee and Cross-Apellee,

vs.

STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and engines,
Respondent,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation,

Claimant and Petitioner, and Appellant and Cross-Appellee,

STEAMSHIP "STRATHALBYN," her tackle, apparel, furniture, etc.,

Respondent,

STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation,

Claimant, Appellee and Cross-Appellant.

United States of America, Western District of Washington, ss.

THE PRESIDENT OF THE UNITED STATES TO AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, claimant and cross-libellant in cause 1036, and to MESSRS. BOGLE, GRAVES, MERRITT & BOGLE, its proctors herein; and to STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as bailee of a cargo, etc., libelant in Cause 1052, and to BALLINGER, BATTLE, HULBERT & SHORTS, its proctors herein, GREETING:

YOU AND EACH OF YOU ARE HEREBY CITED AND ADMONISHED to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to an appeal to the said court duly filed in the office of the Clerk of the United States District Court for the Western District of Washington, Southern Division, wherein the said Strathalbyn Steamship Company, Ltd., a corporation, is cross-appellant, and you, the said American-Hawaiian Steamship Company, a corporation, and Strathalbyn Steamship Company, Ltd., a corporation, as bailee of a cargo, etc., are appellees, then and there to show cause, if any there be, why the decree of the United States District Court for the Western District of Washington, Southern Division, in the above entitled consolidated causes, dated November 26, 1915, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States of America, this 23rd day of December, 1915.

(Seal.) EDWARD E. CUSHMAN,
Judge of the United States District Court
for the Western District of Washington.

Due service of the within citation, after the filing of the same in the office of the Clerk of the above entitled court, is hereby admitted on this 23rd day of December, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for American-Hawaiian
Steamship Company above mentioned.
McCUTCHEON, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT & SHORTS,
Proctors for Strathalbyn Steamship
Company, Ltd., a corporation, as bailee
of cargo, etc.

(Filed Dec. 23, 1915.)

CERTIFICATE OF CLERK U. S. DISTRICT COURT AS TO TRANSCRIPT OF RECORD AS REQUIRED BY PRAECIPE OF CROSS APPELLANT HEREIN.

United States of America, Western District of Washington, ss.

I, FRANK L. CROSBY, Clerk of the United States District Court of the Western District of Washington, do hereby certify and return that the foregoing pages numbered from 459 to 1461 inclusive, contain a full, true and correct transcript of the record on cross appeal in the case of STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, vs. STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture and engines, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant, and STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, as Bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owner and insurers of said cargo, Libellant, vs. STEAMSHIP "VIRGINIAN," her tackle, apparel, furniture, boilers and en-

gines, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a corporation, Claimant, and Steamship "STRATHALBYN," her tackle, apparel, furniture, etc., STRATHALBYN STEAMSHIP COMPANY, LTD., a corporation, Claimant, lately pending in this court, as required by the praecipe of Messrs. Huffer & Hayden, solicitors for the cross appellant, filed in said cause, as the originals thereof appear on file in this court, at the City of Tacoma, in the District aforesaid.

I further certify and return that I hereto attach and herewith transmit the original Citation on the cross appeal herein. The original exhibits have already been transmitted on the direct appeal.

I further certify that the following is a full, true and correct statement of all statement of all expenses, costs, fees and charges incurred and paid in my office, by and on behalf of the cross appellant herein, by its solicitors, Messrs. Huffer & Hayden, for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, to-wit:

| | |
|---|---|
| Clerk's fees (Sec. 828 R. S. U. S.) for making record, certificate and return, 28 folios at 15c each | $ 4.20 |
| Certificate of Clerk as to transcript on cross appeal herein, 4 folios at 15c each | .60 |
| Seal to said certificate to transcript | .20 |
| Statement of cost of printing cross-appellant's transcript of record, collected and paid by the solicitors for cross-appellant, Messrs. Huffer & Hayden | 10.20 |

ATTEST MY HAND AND THE SEAL OF THIS COURT, this 3rd day of January, 1916.

FRANK L. CROSBY, Clerk.

(Seal) By E. C. ELLINGTON, Deputy Clerk.

No. 2728

# UNITED STATES CIRCUIT COURT OF APPEALS

## FOR THE NINTH CIRCUIT

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation,

Appellee.

---

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owners and insurers of said cargo,

Appellee.

---

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION.

# BRIEF OF APPELLANT

W. H. BOGLE,
CARROLL B. GRAVES,
F. T. MERRITT,
LAWRENCE BOGLE,
*Proctors for Appellant.*

Seattle, Washington.

Filed
FEB 21 1916
F. D. Monckton
Clerk

SHERMAN PRINTING & BINDING CO., SEATTLE, WASH.

No. 2728

# UNITED STATES CIRCUIT COURT OF APPEALS

## FOR THE NINTH CIRCUIT

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation,

Appellee.

---

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a Corporation, Owner and Claimant of Steamship "Virginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Corporation, as bailee of a cargo of lumber consisting of 3,563,011 feet, and for the use and benefit of the owners and insurers of said cargo,

Appellee.

---

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION.

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# BRIEF OF APPELLANT

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## STATEMENT

This is an appeal from a decree in Admiralty of the United States District Court for the Western District of Washington, Southern Division. The original

libel was filed by the Strathalbyn Steamship Company, owner of the steamship "Strathalbyn," against the steamship "Virginian." The American-Hawaiian Steamship Company, as owner of the steamship "Virginian," appeared in this proceeding, filed its claim, and also filed an answer and cross-libel against the steamship "Strathalbyn." The Strathalbyn Steamship Company, Ltd., appeared as claimant of the steamship "Strathalbyn," and filed an answer to the cross-libel of the "Virginian." Subsequently, the Strathalbyn Steamship Company, Ltd., as bailee of the cargo aboard the steamship "Strathalbyn" at the time of the collision, filed a libel against the steamship "Virginian" on account of damage sustained by said cargo. The American-Hawaiian Steamship Company appeared in this proceeding, as claimant of the steamship "Virginian," and first moved the court for a dismissal of this second libel, on the ground that the same was an amplification of the relief sought in the first libel filed by the Strathalbyn Steamship Company, and that the sum demanded in the first libel was sufficient to cover the damages both to the "Strathalbyn" and to her cargo. Upon denial of this motion, the court ordered the two causes consolidated and the American-Hawaiian Steamship Company filed its answer in the second proceeding, and also filed its petition, under the 59th Admiralty rule of the Supreme Court, against the steamship "Strathalbyn," upon which petition the steamship "Strathalbyn"

was brought into this second proceeding as respondent. The Strathalbyn Steamship Company, Ltd., appeared therein as claimant of said steamship "Strathalbyn" and filed its answer to the libel therein. The first proceeding brought by the Strathalbyn Steamship Company was numbered 1036 of the records and files of the lower court; the second proceeding brought by the Strathalbyn Steamship Company, as bailee, was numbered 1052 of the records and files of the lower court. After the order of consolidation, the proceedings were referred to a commissioner for the purpose of taking testimony and testimony thereafter was taken in the consolidated causes.

The collision from which these causes arise occurred on the night of January 12, 1912, between the hours of 7:30 and 8:00 o'clock p. m., at a point south of Pully Point, on the waters of Puget Sound, approximately half way between the ports of Seattle and Tacoma, Washington. The "Virginian" is a large freight steamer, 492 feet long, 58 feet 3 inches beam, 31 feet 9 inches depth, with a maximum carrying capacity of 12,000 tons, and at the time of the collision was engaged in a regular trade between the ports of San Francisco, Seattle, Honolulu and Salina Cruz, connecting at Salina Cruz with the Tehauntepec Railway, and was owned by the American-Hawaiian Steamship Company, being one of their regular Pacific coast fleet. The "Strathalbyn" was a British tramp steamer, 387

feet long, 52 feet beam, with a dead weight carrying capacity of 7,200 tons, owned by the Strathalbyn Steamship Company, Ltd., a British corporation with its head office at Glasgow, Scotland, and at the time of the collision was under charter to the American Trading Company for a voyage from Tacoma, Washington, to Australia. The "Virginian," at the time of the collision, was on her regular voyage from Seattle to Tacoma with approximately 2,000 tons of cargo, being light and standing high out of the water. The "Strathalbyn" at the time was on her voyage from Tacoma to Australia, with a full cargo of lumber below decks and with a heavy deck load of lumber both on her forward and after decks, and had a 6° list to starboard.

In the libel filed by the Strathalbyn Steamship Company, in Cause 1036 of the lower court, it was alleged that the 'Strathalbyn" left the port of Tacoma about 6:15 p. m., on January 12, 1912, bound on her voyage for Sydney, Australia; that at said time she was fully equipped, manned and supplied, that her range and side lights were properly set and brightly burning and that she was in charge of a competent pilot, master and crew, with a lookout on her forecastle head; that she proceeded on her voyage until the light of Robinson Point was abeam, when her course was changed to northwest, one-half north, magnetic; that at the time of rounding Robinson Point the light on

Pully Point was visible ahead, as well as the lights of two vessels which appeared to be north of Pully Point and approaching the "Strathalbyn;" that when the "Strathalbyn" was about one-half way between Robinson and Pully Points, she blew one blast of her whistle and received an answering blast from the steamship "Flyer," being one of the vessels which she had previously seen ahead of her, and passed the said "Flyer" port to port; that as soon as the "Flyer" had passed the "Strathalbyn," the "Strathalbyn" blew one blast of her whistle to the "Virginian," as a signal to pass her on the port side; that at the time of blowing this blast, both the red and green side lights of the "Virginian" were visible; that the "Virginian" did not answer this first passing signal and that after proceeding for approximately another minute, the "Strathalbyn" blew another blast of her whistle, as a signal to the "Virginian," which blast was not answered by the "Virginian." That at this time the red light of the "Virginian" had closed and after giving this second passing whistle to the "Virginian," and after having waited and received no reply from the "Virginian," and after having ported her helm, the engines of the "Strathalbyn" were stopped, and about a minute thereafter the "Strathalbyn" again sounded one blast of her whistle, as a signal for the "Virginian" to pass her port to port, which blast was not answered by the "Virginian," and that at this time the red light

was entirely shut out and the green light being alone visible, the "Strathalbyn" backed full speed astern and sounded the danger signal. That the "Virginian" answered this with three blasts of her whistle. That shortly thereafter the "Virginian" struck the "Strathalbyn" on the port bow in the vicinity of the hawse pipe.

It was further alleged that the collision occurred without any fault on the part of the "Strathalbyn," and was solely through the fault, carelessness and neglect of the "Virginian," as aforesaid, and in failing to keep away from the "Strathalbyn." (Apostles, pp. 5 to 8.)

The answer of the American-Hawaiian Steamship Company to this libel denied that the "Strathalbyn" was equipped with proper range and side lights, and denied that the same were properly set and burning. It admitted that the "Virginian" heard a blast at some point ahead of her, which was answered by the "Flyer," at a time when the "Flyer" was about a quarter of a mile ahead of and off the starboarl bow of the "Virginian;" admitted that thereafter the "Virginian" heard the blast of a whistle from some point ahead, and admitted that thereafter she heard another blast from a point ahead, which blast was not answered by the "Virginian," for the reason that neither the lights of the vessel nor the vessel itself, from which the blasts proceeded, were visible to the pilot, officers or lookout on the "Virginian." It further admitted that the "Vir-

ginian" heard the danger signal immediately prior to the collision, and admitted that she answered this with three blasts of her whistle. (Apostles, pp. 9 to 11.)

By way of cross-libel, the American-Hawaiian Steamship Company alleged that the "Virginian" left the port of Seattle at about 6:40 p. m. on the evening of January 12, having aboard about 2,000 tons of cargo, and proceeded on her way to the port of Tacoma, and that the said steamship was at said time fully equipped and manned, and supplied with good and sufficient range and side lights, properly set and brightly burning, with a lookout stationed on her forecastle head and that it was in charge of a competent pilot, officers, master and crew, and that after rounding Alki Point, she proceeded on a course southeast by south, magnetic, until she approached Pully Point, when she hauled to the westward for the purpose of keeping well off said point, and that she was abeam of said point at 7:53 p. m., ship's time, and approximately half a mile distant therefrom; that when abeam of said point she straightened out her course for Point Robinson to southeast, one-quarter south, magnetic, and that she proceeded on this course until the happening of the collision with the steamship "Strathalbyn." That when she was abreast of Pully Point she was overtaken and passed by the steamer "Flyer," which said steamer hauled off to the right, passing on the starboard side of the "Virginian," with a clearance of about 100

yards; that said "Flyer," having given one blast of her whistle to the "Virginian," which the said "Virginian" answered with a blast of her whistle, proceeded on her way; that when the steamship "Flyer" was about an eighth of a mile ahead and well off the starboard bow of the "Virginian," the pilot and third officer of the "Virginian" heard one blast of a whistle given from some vessel ahead whose lights were not visible; that this blast was answered by the steamship "Flyer;" that about one minute thereafter they again heard one blast of the whistle from some point ahead, but being unable to see any ship's lights or to distinguish the vessel from which the blasts proceeded the pilot immediately ordered the engines of the "Virginian" stopped, and with the aid of his marine glasses attempted to discover from what vessel the blasts had proceeded; that neither the pilot nor third officer were able to see the lights of any ship ahead, and receiving no call or information from their lookout, the pilot immediately ordered the engines reversed full speed astern, at which time another blast was heard at some point ahead; that a short time thereafter, the pilot and other officers of the "Virginian" being still unable to discover the lights of any vessel from which the said blasts had proceeded, or to discover or locate the position of said vessel, four blasts were heard from a point ahead and were immediately answered by three blasts of the whistle of the "Virginian," signifying that her

engines at the time were going full speed astern, and a few seconds later the said steamship "Strathalbyn" loomed out of the darkness immediately in front of the "Virginian," and the two vessels forthwith came into collision, head on, or nearly so, said steamship "Virginian" being struck on her starboard side just abaft her stem, listing her to port. That at the time of the collision the engines of the "Virginian" had been reversing full speed astern two minutes or more and that immediately after the collision she backed away from the steamship "Strathalbyn." That the night was dark at the time of said collision and that for some little time prior thereto the sky was overcast and rain fell shortly thereafter.

It is further alleged that the said collision occurred without any fault on the part of the steamship "Virginian" or her officers or crew, but solely because the steamship "Strathalbyn" did not at said time have starboard and port lights or any mast head or range lights properly placed and lighted, as required by law, so as to render said ship visible to an approaching vessel in the night time, and because the said steamship "Strathalbyn," receiving no answer to the signal blast of her whistle, was advised that she could not be located by the steamship "Virginian," and negligently proceeded on her course. (Apostles, pp. 11 to 15.)

The Strathalbyn Steamship Company, in its answer to this cross-libel, admitted that the "Virginian's"

range lights and side lights were properly set and burning, admitted that the "Flyer" passed the "Virginian" in the vicinity of Pully Point on the starboard side of the "Virginian" and that the "Flyer" blew one blast of her whistle to the "Virginian" at the time of passing, which was answered by the "Virginian," and affirmatively alleged that after the "Strathalbyn" had passed the "Flyer," and while she and the "Virginian" were approaching, and when the red and green lights of the "Virginian" were visible, and her range lights were both in line, the "Strathalbyn" blew one passing blast to the "Virginian," signifying that it was her intention to pass port to port, but that instead of the "Virginian" responding to said signal, the "Virginian" swung to port and closed her red light and continued to approach with little, if any, abatement in her speed. That in this position the "Strathalbyn" then blew another passing signal to the "Virginian," signifying her intention to pass port to port.

It is further alleged that the "Strathalbyn" ported her helm between the first and second blasts of the "Strathalbyn," but that instead of the "Virginian" porting her helm, the "Virginian" continued to swing to port; that thereupon the "Strathalbyn" again blew a passing signal to pass the "Virginian" port to port, but that the "Virginian" neglected to respond to said signal and the "Virginian" continued to swing to port, and it then becoming evident that the "Virginian" was failing

and neglecting to conform to the rules of the road, the "Strathalbyn," after again porting her helm, blew the danger signal.

It is further alleged that at about the time of giving the danger signal to the "Virginian," the "Strathalbyn" reversed her engines full speed astern, and so remained reversed for about a minute, and at the time of the collision the "Strathalbyn" was practically stationary.

It is further alleged that the "Strathalbyn" was showing her red light to the "Virginian" at the time of blowing her passing signal, and continued to show her red light up to the time of the collision, but that the "Virginian" neglected to heed said light or the passing signals and neglected to stop and reverse in time to avoid the collision. (Apostles, pp. 15 to 18.)

The pleadings in Cause No. 1052 in the lower court are practically the same as the pleadings in Cause No. 1036, as we have set them out above.

After a lengthy hearing before the Commissioner, these consolidated causes were argued and submitted to the court upon the testimony taken and returned by the Commissioner, and numerous depositions taken in said consolidated causes by stipulation of the parties, and the court, on the 10th day of October, 1914, filed its memorandum decision in said consolidated causes, wherein it found both vessels at fault. In this memo-

randum decision the court first considered *"the faults alleged as to the lights of the 'Strathalbyn' * * * as first in point of time and so affecting that which followed,"* (1416) and held, after exhaustive consideration and review of all the testimony, *"that the side lights of the 'Strathalbyn' were hidden to the 'Virginian' as she approached, and that this was a proximate cause of the collision."* Having reached this conclusion as to the primary and initial fault of the "Strathalbyn," the court did not consider the other faults alleged against her.

The court also found "that the engines of the 'Virginian' were not reversed until less than a minute before the collision, and that she was clearly in fault for not reversing her engines sooner." (1430); and further found that the "Virginian" was in fault for failure to give the danger signal. The court did not expressly find that either of these faults of the "Virginian" were a contributing cause to the collision. However, the damages were ordered divided and the causes again referred to the Commissioner for the purpose of ascertaining the damages. Subsequent to this decision, however, the parties stipulated as to all the damages, and on November 26, 1915, a final decree was entered by the court, allowing all parties interest on damages from the date of disbursements, and their taxable costs. The court, following the stipulation of the parties, fixed the damages in this decree as follows:

Damages to the "Strathalbyn," including demurrage and interest, $121,793.97, taxable costs of "Strathalbyn," $6.248.92, making a total of $128,042.89; damages to the "Virginian," including demurrage and interest, $69,519.97, taxable costs of "Virginian," $5,153.00, making a total of $74,672.97; damages to cargo, including interest, $8,201.77, taxable costs of cargo owner, $52.08, making a total of $8,253.85. The court entered a decree, allowing the "Strathalbyn" one-half of its excess of damages and taxable costs, taxed as above at $128.042.89, over and above the damages and taxable costs of the "Virginian," taxed as above at $74,672.97, or the sum of $26,684.96, to which was added the sum of $744.07, being allowance for one-half of the amount paid by the "Strathalbyn" in settlement of personal injuries to and loss of effects by seamen aboard the "Strathalbyn," in accordance with the stipulation of the parties, making a total allowance to the "Strathalbyn" of $27,429.03 against the American-Hawaiian Steamship Company, claimant of the steamship "Virginian," and the American Surety Company, surety on its stipulation for the release of the steamship "Virginian," and ordered that execution issue therefor. The court further allowed the cargo owner the full amount of its damages, interest and costs, amounting to $8,253.85, against the American-Hawaiian Steamship Company, as claimant of the steamship "Virginian" and the American Surety Company, surety on its stipulation for the release of said vessel. It further

provided that execution issue therefor. The court then provided that execution in favor of the Strathalbyn Steamship Company, Ltd., as libelant in the original proceeding, "now only issue for the amount decreed it, to-wit, the sum of $27,429.03, less one-half the amount deducted in favor of the Strathalbyn Steamship Company, Ltd., a corporation, as bailee, that is, less the sum of $4,126.92, and that execution on such deducted amount by stayed until the time for an appeal herein has expired; that in case such an appeal is not taken by claimant and cross-libelant, execution then to issue for the remainder;" and further provided that in case of an appeal, execution be stayed until the filing of the mandate, then to issue unless the claimant and cross-libelant prevailed on the appeal; that upon payment by said claimant and cross-libelant to the bailee of the cargo of such deducted amount of $4,126.92, execution shall be perpetually stayed or judgment satisfied. (Apostles, pp. 1435 to 1439.)

From this judgment the appellant prosecutes this appeal and makes the following

# ASSIGNMENT OF ERRORS

1. That the Court erred in finding and decreeing that the collision mentioned in the pleadings herein between the S. S. "Virginian," and the S. S. "Strathalbyn," resulted from or was caused by the mutual fault of said S. S. "Virginian" and said S. S. "Strathalbyn," and in refusing to find and decree that said collision resulted from the sole fault and negligence of the said S. S. "Strathalbyn."

2. That the Court erred in finding and decreeing that in said causes the damages resulting from the collision mentioned in the pleadings should be divided.

3. That the Court erred in refusing to allow, award and decree to claimant and cross-libelant in Cause No. 1036 the full amount of damages sustained by it as the result of the collision between the said S. S. "Virginian" and the said S. S. "Strathalbyn," together with interest thereon, and its costs in said suit, as prayed for in its said cross-libel.

4. That the Court erred in finding that the engines of the "Virginian" were not reversed until less than a minute before the collision.

5. That the Court erred in finding that the "Virginian" was in fault for not reversing her engines sooner.

6. That the Court erred in holding that the failure of the "Virginian" to reverse her engines sooner

in any way caused or contributed to the collision between the "Virginian" and the "Strathalbyn."

7. The Court erred in finding that the "Virginian" should have blown a danger signal.

8. The Court erred in holding that the failure of the "Virginian" to give a danger signal caused or in any way contributed to the collision between the "Virginian" and the "Strathalbyn."

9. The Court erred in refusing to hold that the burden of proof was upon the "Strathalbyn" to show that her fault was not the sole cause of said collision.

10. The Court erred in allowing the Strathalbyn Steamship Company, Ltd., libelant in Cause No. 1036, interest on its damages and costs in said suit.

11. The Court erred in allowing the Strathalbyn Steamship Company, Ltd., as bailee of cargo, libelant in Cause No. 1052, interest on its damages and costs in said suit.

12. The Court erred in refusing to dismiss Cause No. 1052.

13. The Court erred in allowing and decreeing that the Strathalbyn Steamship Company, Ltd., as bailee of cargo, libelant in Cause No. 1052, recover from American-Hawaiian Steamship Company, claimant, the full amount of its damages, or any portion thereof.

14. The Court erred in allowing the Strathalbyn Steamship Company, Ltd., libelant in Cause No. 1036, one-half of the difference between its excess damages over the damages sustained by claimant and cross-libelant, and refusing to deduct therefrom one-half of the amount decreed to the Strathalbyn Steamship Company, Ltd., as bailee of cargo, against the American-Hawaiian Steamship Company, claimant, in Cause No. 1052.

15. The Court erred in decreeing and allowing immediate execution against American-Hawaiian Steamship Company and its surety for the amount decreed in favor of libelant in Cause No. 1036, to-wit, the sum of Twenty-seven Thousand Four Hundred Twenty-nine and 03/100 Dollars ($27,429.03), less one-half the amount decreed in favor of libelant in Cause No. 1052, against the American-Hawaiian Steamship Company, to-wit, $4,126.92.

16. The Court erred in holding that execution on said deducted amount of $4,126.92 should be stayed until time of appeal had expired, and that in case such appeal was not taken by said claimant and cross-libelant, execution should then issue for the remainder.

## CONTENTIONS OF APPELLANT

The above assignment of errors is naturally an attack upon that portion of the decision of the lower court holding the "Virginian" guilty of any fault, and is also an attack upon the form of the decree of the lower court. It will be the contention of the appellant that the finding of the court that the steamship "Strathalbyn," at the time of the collision and prior thereto, was equipped with insufficient lights, contrary to law and the Collision Regulations, and the further finding that these lights were so positioned that they were obscured by the cargo stanchions aboard the "Strathalbyn" so that they could not be seen ahead, and were and could not be seen by the "Virginian" or any of her officers or crew as the vessels were approaching each other prior to said collision, are findings of initial gross fault on the part of the "Strathalbyn," which of itself was sufficient to account for this collision, and that it is not sufficient for the "Strathalbyn" to raise a question or doubt as to the navigation or fault of the "Virginian," but that the burden is upon the "Strathalbyn" to conclusively show that the "Virginian" was also guilty of gross fault which was a direct contributing cause to said collision. It will also be the contention of the appellant that the "Strathalbyn" was guilty of other gross faults which were not considered by the court below and that these faults, together with the gross initial fault of insufficiency and obstruction of

her lights, being sufficient to account for the collision, even if the "Virginian" was guilty of faults attributed to it by the lower court, they were mere errors of judgment by the master and officers in charge of the "Virginian" at a time of extreme danger, which danger was brought about by the gross carelessness and negligence of the "Strathalbyn," and that such faults, if any, were not in any way a proximate cause of the collision and did not contribute to the same, and were not of such character as to hold the "Virginian" for an equal amount of the damages.

We shall first consider briefly the faults against the "Strathalbyn" found by the lower court and we shall then consider the other faults alleged against the "Strathalbyn" which were not considered by the lower court. We shall next consider the alleged faults found against the steamship "Virginian," and in conclusion will consider the form of decree entered by the lower court.

# ARGUMENT

## I.

**The Faults of the "Strathalbyn" were the proximate, primary and causative faults sufficient to account for the Collision and the burden is on the "Strathalbyn" to show that they were not the sole causes thereof.**

(ASSIGNMENT OF ERRORS, 1, 3, 9.)

### (A) POSITION OF VESSELS WITH REFERENCE TO EACH OTHER AT TIME PASSING WHISTLES WERE GIVEN.

In order to arrive at a clear understanding of the navigation of the "Virginian" and "Strathalbyn" and their respective duties prior to the collision, it is necessary to determine the location of the vessels with reference to each other at the time the various passing signals were given by the "Strathalbyn." The testimony shows that the "Flyer" passed the "Virginian" off of or slightly north of Pully Point. That after passing some distance ahead of the "Virginian," the "Flyer" exchanged passing signals with the "Strathalbyn" (the first whistle being blown by the "Strathalbyn"), that as the "Flyer" and "Strathalbyn" were passing abeam the "Strathalbyn" blew her first whistle to the "Virginian." The above facts are admitted, but it is difficult to accurately determine, from the conflicting testimony, the exact location of these vessels with reference to each other at the time these passing signals were given.

The "Virginian" passed Pully Point at 7:53 by her chart room time. (Apostles, pp. 833, 889, 1157.) The collision took place between 7:59 and 8:00 by the same time. (Apostles, pp. 900, 903, 1166.) This time is definitely determined. By the "Strathalbyn's" engine room time the collision took place at 7:38 (Apostles, p. 371), so that there was about 21 minutes difference between the "Strathalbyn's" engine room time and the "Virginian's" chart room time. Captain Burns of the "Flyer" testified that the "Strathalbyn" was from ¼ to ½ mile ahead of the "Flyer" when she whistled to the "Flyer" (Apostles, pp. 174-5), and that the "Virginian" was about ⅛ of a mile astern of the "Flyer" at this time. (Apostles, p. 176.) Captain Beecher, pilot of the "Strathalbyn," testified that the "Flyer" was from ¼ to½ a mile ahead of the "Strathalbyn" when he signaled her. (Apostles, p. 205, p. 222.) That he gave the "Virginian" the first passing signal when the "Flyer" was abeam of the "Strathalbyn" (Apostles, p. 222). Beecher further testified that one minute elapsed between his first and second whistles (Apostles, p. 223), that another minute elapsed between his second and third whistles (Apostles, p. 227), that he gave the danger signal and reversed immediately after giving the third whistle (Apostles, pp. 227, 284), and that the collision occurred about a minute later (Apostles, p. 228). That the point of collision was about one mile south of Pully Point (Apostles, p. 222).

Capt. Crerar, master of the "Strathalbyn," came on deck between the first and second whistles to the "Virginian." He estimated that the "Virginian" was about a mile away at that time (Apostles, p. 241), that the "Flyer" was from a quarter to half a mile astern (Apostles, p. 241), that the "Strathalbyn" whistled to the "Virginian" about two minutes after she had whistled to the "Flyer" (Apostles, p. 257). Purdy, first officer of the "Strathalbyn," estimated that the "Virginian" was about one and one-half miles away at the time "Strathalbyn" gave her the first passing whistle (Apostles, p. 294). Russell, quartermaster of the "Strathalbyn's" wheel, testified that the "Strathalbyn" whistled to the "Virginian" one to one and one-half miles after she had whistled to the "Flyer" (Apostles, p. 328). He states that about one minute elasped between the first and second passing signals, and about two minutes elapsed between the second passing whistle and the collision (Apostles, pp. 329-30).

Capt. Green, master of the "Virginian," testified that he came on the bridge immediately after the "Strathalbyn's" first whistle to the "Virginian," that the "Flyer" was about 1,000 feet ahead of the "Virginian" at this time (Apostles, p. 839). Capt. Green went below as the "Flyer" passed the "Virginian" off Pully Point at 7:53, and had been below about three minutes when he heard the "Virginian" telegraph from the bridge to the engine room to stop the engines (Apostles, p. 835).

McLeod, third officer of the "Virginian," testified that about two minutes after the "Flyer" had passed the "Virginian," he heard one whistle from ahead which was answered by the "Flyer" (Apostles, p. 891). That about one minute passed between the "Strathalbyn's" first and second whistles (Apostles, p. 897), and about two minutes elapsed between this second whistle and the collision (Apostles, p. 899). That the collision occurred about ¾ of a mile south of Pully Point (Apostles, p. 899). That he looked at his watch at time of collision and told the quartermaster at the wheel (Shuri), to note the time which was "very close to eight, it was nearer eight than it was anything else." (Apostles, p. 900.) Capt. Duffy, pilot of the "Virginian," testified that the "Flyer" passed the "Virginian" off Pully Point at 7:53 (Apostles, p. 1157); that when the "Flyer" was 300 to 400 feet ahead of the "Virginian" he heard a whistle from ahead which was answered by the "Flyer" (Apostles, p. 1158); that about one minute after the "Flyer" had answered this whistle he heard another whistle from ahead (being "Strathalbyn's" first whistle to the "Virginian) (Apostles, p. 1160). That about one minute elapsed between the "Strathalbyn's"' first and second whistles, that from one and one-half to two minutes elapsed between this second whistle and the danger signal and one-half to one minute from the danger signal to the collision (Apostles, pp. 1174-5); that the collision occurred between 7:59 and 8 o'clock (Apostles, p. 1166).

The above is all the material testimony as to the position of the "Strathalbyn," "Virginian" and "Flyer" at the time of the various passing whistles. From this testimony, certain facts are fairly accurately established.

The "Flyer" overtook and passed the "Virginian" at 7:53 ("Virginian's" time), while the vessels were off Pully Point. The collision occurred between 7:59 and 8 o'clock by the "Virginian's" time, or 7:38 by the "Strathalbyn's" engine room time. From the time the "Flyer" passed the "Virginian" at 7:53 to the time of collision between 6 and 6½ minutes elapsed. From the time the "Strathalbyn" blew her passing signal to the "Flyer" until the said vessels were abeam from one to two minutes elapsed. That the "Strathalbyn" blew her first passing whistle to the "Virginian" when the "Flyer" was abeam or just abaft the beam of the "Strathalbyn." That about one minute elapsed between the "Strathalbyn's" first and second passing whistles to the "Virginian" and that from two to two and one-half minutes elapsed between the "Strathalbyn's" second whistle and the collision, and that if the "Strathalbyn" blew a third passing whistle (it was not heard aboard the "Virginian"), it was blown at practically the same time as the danger whistle, that is, about one minute or more after the second whistle, and that the danger whistle was blown about (probably less than) one minute before the collision. That from

the "Strathalbyn's" first whistle to the "Virginian" from three to three and one-half minutes elapsed before the collision.

The "Flyer" was making 14½ knots, the "Virginian" 11 knots, and the "Strathalbyn" 6 knots or more prior to the collision (Apostles, p. 1414). The Court found that the "Flyer" was making 14 knots, but Burns' testimony shows 14½ knots (Apostles, p. 180). From these established facts it is possible to determine approximately the position of these vessels at the time of the various passing signals. At 14½ knots (6,080 ft.) per hour the "Flyer" would be making 1,470 feet per minute, the "Virginian" at 11 knots per hour would be making 1,116 feet per minute, and the "Strathalbyn" at 6 knots per hour would be making 608 feet per minute. The "Flyer was making approximately 354 feet per minute better time than the "Virginian" and was forging ahead of her at that rate of speed. The "Strathalbyn" and "Flyer" were approaching each other at their combined speeds, or at the rate of 2,080 feet per minute. The collision occurred from 3 to 3½ minutes after the "Strathalbyn" blew her first whistle to the "Virginian," when she had the "Flyer" abeam, therefore, the "Strathalbyn" was approximately the same distance ahead of the "Virginian" at this time as the "Flyer" was ahead of the "Virginian" (the "Strathalbyn" approaching and the "Flyer" leaving the "Virginian"). If the collission

occurred at 7:59, then the "Flyer" when abeam of the "Strathalbyn" (3 to 3½ minutes prior to collision) was from 2½ to 3 minutes past the "Virginian" (having passed her at 7:53); if the collision occurred at 7:59½, the "Flyer" was from 3 to 3½ minutes past the "Virginian," in other words the "Flyer" was from 2½ to 3½ minutes past the "Virginian" at the time she was abeam of the "Strathalbyn" and during this period she had been leaving the "Virginian" astern at the rate of 354 feet per minute.

It is, therefore, fairly accurately determined that at the time the "Strathalbyn" blew her first passing whistle to the "Virginian," the "Flyer," which was abeam of the "Strathalbyn," was from 885 feet to 1,239 feet ahead of the "Virginian," and that this was the approximate distance between the "Strathalbyn" and "Virginian," that is, from ⅛ to ¼ of a mile. This is directly corroborated by Captain Burns ("Flyer"), testimony.

A. Oh, the 'Virginian,' I was probably a quarter of a mile or more from the 'Virginian' when we passed the 'Strathalbyn.'" (Apostles, p 174.)

Burns of the "Flyer," estimates that the "Strathalbyn" was from ¼ to ½ mile ahead of the "Flyer" at the time she signalled the "Flyer," and that the "Virginian" was ⅛ of a mile astern of the "Flyer" at this time; Beecher of the "Strathalbyn," estimates the same distance. The testimony of Beecher is that these ves-

sels were abeam about two minutes later; Duffy says about one minute later; Crerar says two minutes later. McLeod says two minutes after "Flyer" passed "Virginian" she whistled to "Strathalbyn." (Apostles, p. 890.) If it took the "Flyer" and "Strathalbyn" one minute to come abeam after exchanging whistles, they must have been 2,080 feet apart at the time of whistling (being combined speed of these vessels), and the "Flyer" would have been from 2 to 2½ minutes ahead of the "Virginian" at this time, or from 708 to 885 feet ahead of the "Virginian," which corroborates Burns' testimony. If it took the "Flyer" and "Strathalbyn" two minutes to come abeam, they must have been 4,160 feet apart, and the "Flyer" would have been from 354 to 531 feet ahead of the "Virginian" (from 1 to 1½ minutes ahead), which corroborates Duffy's estimate of 300 to 400 feet. Capt. Green of the "Virginian" went below as the "Flyer" passed the "Virginian" at 7:53; he was below three minutes when he heard the "Virginian" telegraph her engine room to stop her engine (being at the time the "Starthalbyn's" first whistle was given to the "Virginian"). In this time the "Flyer" would have forged ahead of the "Virginian" 1,062 feet (three minutes at 354 feet per minute). Green estimates that the "Flyer" was 1,000 feet ahead of the "Virginian" at this time, which directly corroborates our figures.

Therefore, it is accurately determined from the above testimony that the "Flyer" passed the "Vir-

ginian" at 7:53; that from one to two minutes before the "Flyer" and "Strathalbyn" were abeam they exchanged passing signals, being from 2,080 feet to 4,160 feet, or from ¼ to ½ a mile apart; that when the "Strathalbyn" and "Flyer" were abeam at 7:55½ to 7:56½ (being 3½ to 3 minutes before collision) the "Virginian" was astern of the "Flyer" and ahead of the "Strathalbyn" from 885 to 1,239 feet.

If the testimony of the witnesses which we have quoted above is correct, then this estimate of the distance between the "Virginian" and "Strathalbyn" at the time of the "Strathalbyn's" first whistle to the "Virginian" must be approximately correct. The testimony of witnesses at the time immediately prior to the collision, when the vessels were in a position of extreme peril, is never accurate, and the tendency of such witnesses is to exaggerate rather than minimize the length of time, as is shown by the testimony of Captain Beecher, where he states that it seemed hours between his danger signal and the collision. When it is remembered that the "Virginian" and "Strathalbyn" were approaching each other at a combined speed of approximately 1,724 feet per minute, it seems that these vessels must have been more than 1,239 feet apart at the time of the "Strathalbyn's" first whistle. If they had not been any greater distance apart they would have come together in approximately one minute after this first whistle was blown. It does not seem possible

that the "Strathalbyn" blew two and possibly three passing signals and gave a danger signal, all within a period of one minute. It is our opinion that these vessels were farther apart than 1,239 feet at the time this first whistle was given. In other words, that it must have been more than three minutes from the time the "Flyer" passed the "Virginian" to the time she was abeam of the "Strathalbyn."

The time of passing Pully Point being fixed at 7:53 and the time of the collision being fixed at from 7:59 to 8:00, or say 7:59½, the time when the "Flyer" was abeam of the "Strathalbyn" was necessarily considerably less than this period of 6½ minutes from the time she passed the "Virginian," and in our opinion was certainly over 3 minutes from the time she passed the "Virginian." The testimony shows that at the time of the collision the "Flyer" was from ½ to ¾ of a mile astern of the "Strathalbyn." As the 'Flyer" was making 1,470 feet per minute, in two minutes she would travel 2,940 feet, being approximately a half mile. During this two minutes after she had passed the "Strathalbyn," the "Strathalbyn," according to her testimony, had been going full speed ahead for about one-third of the period, had been stopped about one-third of this period and had been reversing about one-third of this period, at the end of which time she was practically at a standstill. The speed which she would make during this two minutes, under the above conditions of her engines, is of course, impossible to accurately

estimate, but this speed, added to the "Flyer's" speed, would make the distance between them at the end of two minutes from one-half to three-quarters of a mile. We are therefore of the opinion that the estimate of the witnesses that from the time the "Strathalbyn" and "Flyer" were abeam to the time of the collision was from 3 to 3½ minutes, is in excess of the actual time and that this time did not exceed two minutes. In other words, that at the time the "Strathalbyn" blew her first whistle to the "Virginian," when she was abeam of the "Flyer," the "Flyer" was from 4 to 4½ minutes ahead of the "Virginian," or from 1,400 to 1,600 feet, and that this was the approximate distance between the "Strathalbyn" and "Virginian" at this time. The estimate of the lower court (Apostles, pp. 1414, 1415), that the "Flyer" and "Strathalbyn" exchanged whistles "not over five minutes" after the "Flyer" had passed the "Virginian" and that it was "three minutes or more" from the "Strathalbyn's" first whistle to the "Virginian" until the collision, is manifestly in excess of the actual time, as this would make a time of from 8 to 8½ minutes plus the time which it took the "Strathalbyn" and "Flyer" to come abeam after exchanging whistles, which must have been at least two minutes, or a total period of say 10 minutes from the time the "Flyer" passed the "Virginian" to the time of the collision, which would make the time of the collision considerably after 8 o'clock. But even taking the Court's finding as correct, it still shows

that these two vessels ("Strathalbyn" and "Virginian") were less than half a mile apart at the time the "Strathalbyn" blew her first whistle. In five minutes' time the "Flyer" would forge ahead of the "Virginian" approximately 1,700 feet, or a little over a quarter of a mile. In two minutes' additional time (that is, the time elapsing from the time the "Flyer" and "Strathalbyn" exchanged passing whistles until they were abeam), the "Flyer" would forge ahead an additional distance of approximately 700 feet, so that at the time the "Strathalbyn" and "Flyer" were abeam, the "Flyer" would be approximately 2,400 feet ahead of the "Virginian," which would be the distance between the "Virginian" and "Strathalbyn," which is less than half a mile.

Now the combined speeds of the "Virginian" (1,116 ft.) and the "Strathalbyn" (608 ft.) is 1,724 feet. Taking into consideration the fact that the "Virginian" stopped at the "Strathalbyn's" first whistle and reversed prior to her second whistle, and the further fact that the "Strathalbyn" stopped at her second whistle and reversed at the time of giving the danger signal, and that both vessels were practically at a stand still at the time of collision, it becomes apparent that it could not have taken these vessels over two minutes to come together after the "Strathalbyn's" first whistle was blown.

This estimate of ½ mile or less cannot be far wrong when it is figured that it would take the "Flyer"

approximately 20 minutes to forge one mile ahead of the "Virginian" or ten minutes to forge one-half mile ahead. The testimony conclusively shows that it was considerably less than ten minutes from the time the "Virginian" and "Flyer" passed at Pully Point at 7:53 to the time of collision. The fact that the "Strathalbyn" was less than ½ mile (probably closer to ¼ mile) from the "Virginian" at the time she blew her first passing whistle has an important bearing on the question of the "Strathalbyn's" navigation prior to the collision, and the question of the "Virginian's" fault, if any.

The appellant contended in the court below, and will contend in this court, that the "Strathalbyn" was at fault in numerous particulars, all of which were direct contributing causes to this collision; that is, she was at fault, first, in that her regulation lights were not such lights as were required by law, and that the same were too dim to be seen at a distance sufficient to enable an approaching vessel to ascertain her proximity in time to avoid a collision; second, in that her side lights were obstructed by her cargo stanchions, so that they could not be seen from ahead; third, that she had no range lights; fourth, that she failed to stop and reverse her engines promptly upon receiving no answer from the "Virginian" to her passing signals; and fifth, that she failed to blow a danger whistle to notify or warn the "Virginian" of her dangerous

proximity and the danger of collision, which was apparent to the "Strathalbyn."

(B) "STRATHALBYN" WAS GROSSLY AT FAULT IN THAT SHE HAD INSUFFICIENT SIGNAL LIGHTS — THAT HER SIDE LIGHTS WERE OBSTRUCTED SO THAT THEY COULD NOT BE SEEN AHEAD, WHICH FAULT WAS THE PRIMARY AND PROXIMATE CAUSE OF THE COLLISION.

The Court below considered first the faults alleged as to the lights of the "Strathalbyn," *"as first in point of time and so affecting that which followed."* The Court, after an exhaustive review of all the testimony relating to the "Strathalbyn's" lights, their visibility and obstruction by the cargo stanchions, held: *"It is therefore concluded that the side lights of the 'Strathalbyn' were hidden to the 'Virginian' as she approached, and that this was a proximate cause of the collision. It is not clear whether but for the obstruction they could have been seen in time to prevent the collision."* (Apostles, p. 1428.)

In arriving at the above conclusion, the Court found, as a fact from the conflicting testimony, that the "Virginian" and "Strathalbyn" were and had been approaching each other head on for a considerable period prior to the collision; that the "Strathalbyn" *did not port her wheel or change her course at any of the times when she blew her passing signals to the*

"*Virginian,*" as testified to by her pilot and officers; that the "Virginian" did not at any time after leaving Pully Point change her course, and that the two vessels collided at the angle and upon the courses upon which they were approaching each other (the "Strathalbyn" approximately N. W. ½ N., and the "Virginian" approximately S. E. ¼ S.), that is head on, or nearly so.

Having reached the above conclusions and having found the "Strathalbyn" guilty of gross initial fault, which was a proximate cause of said collision, the Court did not deem it necessary to consider the other faults alleged against the "Strathalbyn." In view of the Court's finding that such initial fault of the "Strathalbyn" was a proximate cause of the collision, it would not at first seem necessary, on the appeal of the "Virginian" from that portion of the decree holding her partly at fault, to discuss or consider any other faults upon the part of the "Strathalbyn." However, the "Strathalbyn" committed other grave faults in her navigation immediately prior to the said collision, but for which faults the collision would not have occurred, and which faults, in connection with the initial fault of the "Strathalbyn" in having defective and obstructed lights, were of so grave a character as to sufficiently account for the collision, and we contend, therefore, that the burden was on the "Strathalbyn" to show that these faults did not constitute the sole cause of the said

collision. We think the rule is clearly stated in the recent case of *The Thielbek*, 218 Fed. 251, decided by the District Court of the District of Oregon:

"Her fault was sufficient to account for the accident, and she is not permitted to escape liability by raising doubt regarding the movements of the Ocklahama. * * * Any doubts arising from her (Ocklahama's) movements, or the contribution of her faults, if any, to the collision, should be resolved in her favor."

The nature and gravity of the "Strathalbyn's" faults will therefore have considerable bearing upon the question of whether or not the "Virginian" was guilty of any fault, and if so, whether such fault was a contributing or proximate cause of the collision.

If the lower court's finding that the "Strathalbyn's" regulation lights were such lights that "it is not clear whether, but for the obstruction, they could have been seen in time to prevent the collision," and its finding that these lights were obstructed by the cargo stanchions so that they could not be seen ahead, and that these vessels were approaching head and head prior to the collision are correct findings under the evidence in this case, we think there can be no doubt that such defects in the 'Strathalbyn's" lights were the initial and proximate cause of this collision, and that such faults were sufficient in themselves to account for the collision, and that the rule as laid down in *The Thielbek* should apply, and the "Strathalbyn" should be held solely at fault.

There are certain facts in connection with the "Strathalbyn's" lights which are either admitted or established by undisputed testimony in this case. At the time of this collision, the "Strathalbyn" was approximately two years old, having been built in Scotland. She was equipped with electric running lights but sometime before she was ready to leave for sea on this particular voyage her dynamo broke down and was not repaired prior to her departure. Her builders had supplied her with auxiliary oil lamps, which lamps had never been used prior to the night of this collision. Her regulation electric side lights were placed on either end of her upper or flying bridge, being approximately 24 feet above her main deck, and well clear of any cargo which she could possibly carry on her forward deck. On the night of the collision the "Strathalbyn" was using for the first time these auxiliary oil lights, the same being placed on either end of her chart room bridge, being the bridge immediately underneath her flying bridge, the floor of this chart room bridge being approximately 16 feet above her main deck (Claimant's Exhibits "5-4" and "5-5" being blue prints). At the time of leaving the port of Tacoma on her voyage to Australia, the "Strathalbyn" had aboard a full load of lumber with a heavy load on her forward as well as her after deck. This deck load of lumber was approximately 14½ feet high; that is, measured from the main deck, and was held in place by cargo stanchions placed in a perpendicular position on the main deck inside the

port and starboard rail, the first stanchion forward being approximately eight feet forward of the bridge, and stanchions being placed every ten or twelve feet up to the forecastle head. These stanchions were six by ten inches and 20 feet long. The width of the main deck, at a distance of eight feet forward of the bridge, measured from the inside of the bulb angle of the starboard rail to the inside of the bulb angle of the port rail, was at least 48 feet 7 inches to 7½ inches (Apostles, p. 1420). At a distance of 12 feet farther this distance was 48 feet 5½ inches, and at another 12 feet forward was 48 feet 2 inches, and so on up to the forecastle head, where the distance was approximately 44 feet. (Claimant's Exhibits "5-4," "5-5.") The distance between the outside of the light box screens measured across the lower bridge deck was a distance of not exceeding 46 feet 6⅝ inches, and the outside of the blocks in the front end of the light screens were not over 47 feet 7 inches. (Libelant's Exhibit Z1.) In other words the stanchions were higher than the side lights and "about six inches and a half further outboard than the side lights. It, therefore follows that, unless this first stanchion on the port side leaned inboard at least six and a half or seven inches at a point level with the lamps used, it would obstruct this light forward." (Opinion of lower court, Apostles, p. 420.)

It was, and is, appellant's contention that the measurement between the light screens was much less than

the above measurement (see Walker's testimony Apostles, p. 1036, and Claimant's Exhibit "5-4"), but for the purposes of this argument we accept libelant's figures as given above.

The "Strathalbyn" contended that this forward deck cargo was so lashed that the stanchions were drawn inboard to such an extent that a light placed in a light screen on the lower bridge deck would not be obscured from ahead. There was some testimony to this effect but the great preponderance of testimony conclusively proved that on the night of the collision the stanchions were so positioned that they did, in fact, obscure the side lights so that they could not be seen from ahead. There was also a direct conflict in the evidence as to the brilliancy of these oil lights. Without reviewing or discussing this evidence in any detail, we are satisfied that the Court's finding that the lights were not proper signal lights, and the further finding that the same were obstructed by the cargo stanchions, are conclusively established by the testimony in the case. The evidence is fully reviewed in the Court's memorandum decision.

## (C) NEGLIGENT NAVIGATION OF "STRATHALBYN" PRIOR TO COLLISION.

Other faults of the "Strathalbyn" which we desire to particularly urge were those in reference to her negligent navigation prior to the collision. We will first consider the navigation of the "Strathalbyn" from

the most favorable view, that is, the statement of such navigation as contained in the libel of the Strathalbyn Steamship Company, Ltd., and the answer of the Strathalbyn Steamship Company, Ltd., to the cross-libel of the American-Hawaiian Steamship Company. These allegations, with respect to the course and navigation of the "Virginian," are disproved by the evidence on behalf of the "Virginian," and are found to be unfounded by the District Court; but we are entitled to test the correctness of the navigation of the "Strathalbyn" by her own allegations and her own theory of the facts.

*Duluth S. S. Co. vs. Pittsburg S. S. Co.,* 180 Fed. 652.
*Albert Dumois,* 177 U. S. 240, 249.

It was the "Strathalbyn's" contention in the court below that at the time she blew her first passing whistle to the "Virginian," the two vessels were approaching each other head on, or nearly so, and by her whistle she indicated to the "Virginian" her intention of passing port to port, but that instead of the "Virginian" complying with her signal and changing her course to starboard, the "Virginian" deliberately changed her course to port so that at about the time the "Strathalbyn" blew her second whistle, the "Virginian's" red light was shut out, her green light being alone visible, and that at the time of blowing her third whistle, this same condiition existed. In other words, that the "Virginian" navigated directly contrary to the "strathal-

byn's" passing signal and deliberately crossed her course, making the collision inevitable.

This view, while set out in the original libel of the Strathalbyn Steamship Company, Ltd., is probably more clearly stated in the answer of the Strathalbyn Steamship Company, Ltd., to the cross-libel of the American-Hawaiian Steamship Company (Apostles, pp. 15-18), where it is alleged that after the "Strathalbyn" had passed the "Flyer," and while the "Virginian" and "Strathalbyn" were approaching each other head on, and while the red and green lights of the "Virginian" were both visible and her range lights in line, the "Strathalbyn" blew a single blast of her whistle as a signal of her intention of passing the "Virginian" port to port, but that instead of answering the said signal and navigating accordingly, the "Virginian" swung to port and closed her red light and continued to approach the "Strathalbyn" with little, if any, abatement in her speed. (This was at the time when the "Strathalbyn" was more than one-half way across from Robinson Point to Pully Point, and after she had seen the "Virginian" and "Flyer" approaching north of Pully Point, and after she had heard the "Virginian" and "Flyer" exchange passing signals, and after she had seen the "Flyer" pass the "Virginian" on the "Virginian's" starboard side and proceed some distance ahead of the "Virginian.") It is alleged that in this situation the "Strathalbyn," about a minute later, blew another

single blast of her whistle to the "Virginian," signifying her intention to pass port to port, but that instead of responding to this second passing signal and navigating accordingly, the "Virginian" continued to swing to port, or across the "Strathalbyn's" course; that in this position the "Strathalbyn," after waiting approximately one minute, and after having stopped her engines shortly after the second passing blast, blew the "Virginian" another single blast, indicating her intention to pass port to port; that the "Virginian" failed to answer this third passing blast or to navigate according thereto, and continued to swing to port or across the "Strathalbyn's" course; and that it then becoming evident for the first time that the "Virginian" was failing and neglecting to conform to the rules of the road, and that there was danger of a collision, the "Strathalbyn" blew a danger whistle to the "Virginian" and reversed her engines full speed astern.

These allegations are substantiated to some extent by the testimony of Beecher, the pilot of the "Strathalbyn." His testimony is that when the "Strathalbyn" rounded Robinson Point, he noticed lights of two steamers ahead, off of and north of Pully Point; that he saw the steamship "Flyer," which was on the inside course, disappear and then reappear on the starboard side of the "Virginian." That subsequently the "Strathalbyn" met the "Flyer" between Pully Point and Robinson Point, and that when be-

tween a half or a quarter of a mile away, the "Strathalbyn" blew one blast of her whistle to the "Flyer," which was answered by the "Flyer;" that at this time the "Virginian" was approaching the "Strathalbyn" in such a position that both of her side lights were visible and her range lights were in line, showing that she was approaching directly head on; that when the "Strathalbyn" had the "Flyer" abeam or abaft of her beam, she gave her first passing signal to the "Virginian;" that prior to signalling the "Flyer" the "Virginian's" side lights and range lights were all visible, slightly on the "Strathalbyn's" port bow, indicating that the "Virginian" was approaching the "Strathalbyn" practically head on. That at the time of the giving of the passing signal to the "Flyer," the lights of the "Virginian" were the same, and at the time of giving the first passing signal to the "Virginian" her lights were the same, indicating that she was, during all of this time, approaching head on. That the "Virginian" did not answer this first passing whistle of the "Strathalbyn," but that despite this fact, the "Strathalbyn" continued full speed ahead for another minute and then gave the "Virginian" another or second passing whistle. That up to the time of giving this second passing whistle, the "Virginian" had been approaching practically head on, so that all of her lights were visible. That at the time of giving this second passing whistle, he noticed that the "Virginian's" red light was getting dimmer and that her range lights were

opening up; that upon noticing this change in the "Virginian's" course, which indicated that she was crossing the "Strathalbyn's" course, he stopped the "Strathalbyn's" engines, but did not reverse them, so as to take the headway off of his vessel. That after waiting about another minute, and noticing that the "Virginian's" red light had entirely shut out, and that her range lights were opening broad, he gave the "Virginian" a third passing signal, indicating his intention to pass her port to port, and that about a minute after he had given this third passing whistle, noticing that the "Virginian's" range lights had opened wide and that her green light was alone visible, he blew a danger whistle and immediately thereafter put his engines full speed astern. That the "Virginian" answered this danger whistle with three blasts of her whistle, indicating that her engines were going full speed astern, and that very shortly thereafter the two vessels came into collision. (Apostles, pp. 203-218.) This is Beecher's testimony in the most favorable light to the "Strathalbyn." There are many inconsistencies and discrepancies in his testimony, which we will point out to the Court later on in this brief. For the purpose of the present argument we will accept the above statement as to the "Strathalbyn's" navigation.

This witness further testified with great detail that at the time of the blowing of each of his three passing whistles to the "Virginian," he ordered the

helm of the "Strathalbyn" ported, and that at the time of the collision the "Strathalbyn's" bow was swinging to starboard.

Considering for a moment that the allegations of the "Strathalbyn's" libel and the answer to the cross-libel, and the testimony of her pilot were all true, we think that these allegations and this testimony, themselves, condemn the "Strathalbyn" of gross and negligent fault in her navigation. The "Strathalbyn," upon rounding Robinson Point, saw the lights of the "Virginian" and the "Flyer" north of Pully Point, approximately five miles away. At the time the "Flyer" passed the "Virginian" in the vicinity of Pully Point, the "Strathalbyn" heard the "Flyer" and the "Virginian" exchange passing whistles. After the "Flyer" had passed the "Virginian" and the "Virginian" had straightened on her course for Robinson Point, the "Strathalbyn" could see both side lights of the "Virginian" and could see that her range lights were in line, which indicated that the two vessels, at that time at least two or three miles apart, were approaching on directly opposite courses. The vessels continued to approach each other head and head, up to the time the "Strathalbyn" whistled to the "Flyer," the "Flyer" at this time being some considerable distance off the "Strathalbyn's" port bow, and of necessity some distance off of the "Virginian's" starboard bow. At this time the "Strathalbyn" and the "Virginian" were pos-

sibly a mile apart and continued to approach each other until the "Strathalbyn" was abeam of the "Flyer," at which time the vessels were not over half a mile apart (nearer a quarter of a mile). The "Virginian" did not answer the first passing whistle blown by the "Strathalbyn" when she was abeam of the "Flyer," and the vessels being in rather close proximity at this time, it was hardly conceivable that the "Virginian" did not hear the "Strathalbyn's" whistle. The "Virginian's" failure or refusal to answer this whistle could indicate only one thing to a competent navigator; that is, that the "Virginian" could not see the "Strathalbyn" or any of her lights and that therefore, under the rules, she was unable to answer the "Strathalbyn's" passing whistle.

Article 18, Rule 1, of the Inland Rules provides:

"When steam vessels are approaching each other head and head, that is, end on, or nearly so, it shall be the duty of each to pass on the port side of the other, and either vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other vessel shall answer promptly by a similar blast of her whistle, and thereupon such vessels shall pass on the port side of each other. * * * The foregoing only applies to cases where vessels are meeting end on or nearly end on in such a manner as to involve risk of collision. In other words, to cases in which by day *each vessel sees the mast of the other in a line* or nearly in a line with her own, and *by night to cases in which each vessel is in such a position as to see both the side lights of the other.*" (Italics ours.)

Article 18, Rule IX, provides:

"The whistle signals provided in the rules under this article for steam vessels meeting, passing, or overtaking, are never to be used except when steamers are *in sight of each other, and the course and position of each can be determined* in the day time by a sight of the vessel, itself, *or by night by seeing its signal lights.* In fog, mist, falling snow, or heavy rain storms, when vessels can not so see each other, fog signals only must be given." (Italics ours.)

Article 18, Rule I, is practically identical with Rule III of the Pilot Rules of the Inland Waters of the Atlantic and Pacific Coasts, effective August 20, 1908.

In place of Rule IX of Article 18, Rule III of the Pilot Rules provides as follows:

"The signals for passing, by the blowing of the whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting 'head and head,' or nearly so, but at all times, when the steam vessels are in sight of each other, when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port. The whistle signals provided in the rules for steam vessels meeting, passing, or overtaking, are never to be used except when steamers are *in sight* of each other, and the course and position of each can be determined in the day time by a sight of the vessel itself, or *by night by seeing its signal lights.* In fog, mist, falling snow or heavy rain storms, when vessels can not so see each other, fog signals only must be given."

Under these rules, the "Virginian" was prohibited from answering the passing signal of the "Strathalbyn," if she was unable to see the "Strathalbyn" or was unable to see her signal lights. This is the only ground upon which she could be excused from answering the

"Strathalbyn's" passing signal, and the lower court held:

"Doubtless the inability of competent and vigilant men on the lookout of the "Virginian" to make out either the "Strathalbyn" or her lights excused the "Virginian" from not accepting and answering the port to port passing signal of the "Strathalbyn," provided for by Rule I. (Apostles, p. 1434.)

(Capt. Sprague's testimony, Apostles, p. 1397.)

At the time the "Strathalbyn" blew this first passing whistle, the "Virginian" and "Strathalbyn" had been approaching each other for at least four or five minutes on directly opposite courses, during which time the bearing of the "Virginian's" lights had not changed, which, under the rules, indicated to the "Strathalbyn" that there was risk of a collision.

INLAND RULES, ARTICLE IV, STEERING AND SAILING RULES. PRELIMINARY.

"Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist."

The "Virginian's" failure to answer the "Strathalbyn's" first blast made this risk of collision all the more imminent. Still, the "Strathalbyn" did not stop her engines or even slacken her speed, but proceeded full speed ahead for about a minute, and gave the "Virginian" a second blast, at which time the vessels were still head on and considerably less than half a mile apart. At this time the "Strathalbyn" had full knowledge that the "Virginian" could not see her or

her signal lights, and the "Virginian," of course, by reason of the repeated signals of the "Strathalbyn," had knowledge that the "Strathalbyn" could see her, knew her location and was indicating that she was changing her course to starboard with the intention of passing port to port, and with full knowledge of the "Virginian's" location and the situation of the two vessels, considered that this maneuver was safe. According to the "Strathalbyn's" testimony and pleadings, at the time of or after the blowing of this second blast to the "Virginian," the "Virginian's red light became dimmer and shut out from vision, and her range lights were opening up so that the "Virginian's" green light was alone visible. In this position the "Virginian's" green light was exposed to the "Strathalbyn's" red light, and the "Virginian's" range lights were opening up, indicating that she was crossing the "Strathalbyn's" course contrary to the "Strathalbyn's" signals, which maneuver not only made the risk of collision imminent, but in view of the close proximity of the vessels, made the collision inevitable, unless immediate steps were taken to avert the same. This was fully realized by the pilot of the "Strathalbyn (Apostles, p. 226). As we have stated before, the "Virginian's" failure to answer this second blast from the whistle of the "Strathalbyn," when the two vessels were considerably less than half a mile apart, could only indicate to a competent navigator that the "Virginian's" officers were still unable to make out the

"Strathalbyn" or any light aboard of her, and were therefore unable and unwilling to answer the "Strathalbyn's" passing signal. At this time the "Strathalbyn" claims to have stopped her engines, but took no steps to reverse the same so as to slacken her headway, nor did she give the "Virginian" a danger signal to warn the "Virginian" of the dangerous situation of the two vessels.

The "Strathalbyn" was heavily loaded with a cargo exceeding 3,000,000 feet of lumber, 14½ foot deck load, forward and aft, with a 6° list to starboard, and according to her testimony was making a little better than six knots an hour under full speed. Of course, with such speed and such a cargo, she had a tremendous momentum, and with a 6° list to starboard she was not entirely manageable in the sense of being able to maneuver rapidly so as to avoid danger. (Apostles, p. 1398.) After stopping her engines, the "Strathalbyn," according to her testimony, proceeded under her momentum for approximately another minute, during which time, according to her testimony, the "Virginian's" range lights opened broad, indicating that the "Virginian" was heading directly across the "Strathalbyn's" course, which alleged maneuver of the "Virginian" of course was directly contrary to the signals which she had received from the "Strathalbyn." At this time the vessels were in very close proximity, and in a situation of imminent peril. The "Strathalbyn" instead

of warning the "Virginian" of the danger, persisted in giving her another or third passing whistle at the same time proceeding ahead under her full momentum, with the engines stopped but not reversed. After giving this third passing whistle to the "Virginian" and having received no response from the "Virginian," which indicated to the "Strathalbyn" that neither her lights nor the vessel itself were seen by the "Virginian," the "Strathalbyn," according to her pleadings, waited approximately another minute until the vessels were in such proximity that a collision was inevitable, at which time she finally blew her danger whistle to the "Virginian" and subsequent thereto reversed her engines to take the headway off the ship. The collision occurred almost immediately thereafter.

In the case of *The New York,* 175 U. S. 187, Mr. Justice Brown, delivering the opinion of the Supreme Court of the United States, laid down a positive rule, which has since been followed by all of the admiralty courts in this country:

"Nothing is better settled than that if a steamer be approaching another vessel which has disregarded her signals, or whose position or movements are uncertain, she is bound to stop until her course be ascertained with certainty. *The Louisiana vs. Fisher,* 21 How. 1, 16 L. ed. 29; *Chamberlain vs. Ward,* 21 How. 548, 16 L. ed. 211; *Nelson vs. Leland,* 22 How. 48, 16 L. ed. 269; *The Martello,* 153 U. S. 64, 71, sub, nom. *The Martello vs. Willey,* 38 L. ed. 637, 640, 14 Sup. Ct. Rep. 723; *The Teutonia,* 23 Wall. 77, sub nom.; *Sieward vs. The Teutonia,* 23 L. ed. 44; *The James*

*Watt,* 2 W. Rob. 271; *The Birkenhead,* 3 W. Rob. 75; *The Hermann,* 4 Blatchf. 441, Fed. Cas. 6408; *The Huntsville,* 8 Blatchf. 228, Fed. Cas. 6915; *The Hammonia,* 4 Ben. 515, Fed. Cas. 6005; *The Mary Sandford,* 3 Ben. 100, Fed. Cas. 9225; *The Arabian,* 2 Stuart, Vice Adm. 72.

There was peculiar necessity for such action in this case. These vessels were about to meet upon crossing courses and to pass each other in the narrowest part of the channel. *The Conemaugh* had three times signaled her wish to take the Canadian side and pass starboard to starboard. *The New York* had three times neglected to give her assent to this arrangement. *The Conemaugh* had construed her failure to reply as an acquiescence to her own signals. *The New York* might have construed such failure as a refusal to acquiesce. In such a case it was clearly incumbent upon *The Conemaugh* to stop until the mystery of her silence was explained, and in failing so to do she was guilty of fault."

And again, at page 207, Justice Brown states:

"The lesson that steam vessels must stop their engines in the presence of danger, or even of anticipated danger, is a hard one to learn, but the failure to do so has been the cause of the condemnation of so many vessels that it would seem that these repeated admonitions must ultimately have some effect. We cannot impress upon the masters of steam vessels too insistently the necessity of caution in passing or crossing the course of other vessels in constricted channels."

The case of *The Duluth S. S. Co. vs. Pittsburg S. S. Co.,* decided by the Circuit Court of Appeals for the Sixth Circuit in 1910, is particularly applicable to the case at bar, and we will therefore take the liberty of citing from this case at some length.

"The crew of *The Bessemer* testified that she and *The Sylvania* exchanged four single blast signals, while the crew of *The Sylvania* testify that she sounded three two-blast signals and exchanged only one single blast signal with *The Bessemer,* and this was just a few moments before the collision. We shall not further notice the evidence of the crew of *The Trevor* nor that of *The Sylvania* in determining the question of negligence on the part of *The Bessemer,* but base the decision of that question alone on the testimony of *The Bessemer's* crew, and it shows substantially the following facts:

These vessels were three-quarters of a mile distant from each other when first sighted. They were approaching nearly head on and perhaps each was slightly on the starboard quarter of the other. *The* Sylvania was passing, or had just passed the stem of *The Trevor,* showing her green light to *The Bessemer,* and continued showing her green light until within two lengths from *The Bessemer.* During this time the two vessels were exchanging one blast passing signals, and yet the master of *The Bessemer* saw that *The Sylvania* was being managed as if under a two-blast signal; that is, steering her course to her left or port side, contrary to the signals which the crew of *The Bessemer* say were exchanged.

*The Sylvania* had proceeded from a point three-quarters of a mile away to within a length and a half or two lengths of *The Bessemer,* under an agreement to pass port to port, while all the time she was moving in a direction contrary to the passing agreement, and across the bow of *The Bessemer,* which had begun to change her course to starboard on exchange of the first passing signal, and up to a few minutes before the collision she was swung four points to starboard. *The Sylvania* was not steered in accordance with the agreement until within a length or two lengths away, when she changed her course in an attempt to pass port to port. It was then too late and the collision occurred. When *The Sylvania* was opposite to the stern of *The Trevor,* she showed her green light to *The Bessemer.* She was moving as if under a two-blast signal down across the bow of *The Bessemer,* but ex-

changing one blast signals, according to the testimony of *The Bessemer's* crew.

It must have been clear to *The Bessemer* that something was radically wrong with *The Sylvania,* or that there was a grave misunderstanding as to the passing agreement, and yet *The Bessemer* did not stop or blow an alarm signal. 'In order to determine where the fault lies, it usually becomes necessary to examine with care the conduct and orders of those in charge of the respective vessels from the time the vessels come in sight of each other to the time they came together.' *The Wenona,* 19 Wall. 41, 22 L. ed. 52. This rule is important here. When the colliding vessels became factors in their proper navigation with relation to each other they were three-quarters of a mile apart. Each of them has the other on her starboard quarter by one-half a point, and had this relation continued the vessels would have passed sarboard to starboard in safety. *The Sylvania* was abreast of *The Trevor* when the second short blast signals were exchanged showing her green light to *The Bessemer,* when on *The Trevor's* stern, according to the witness Captain Hoag, of *The Bessemer.* He was then asked as follows:

'Q. If *The Sylvania* was making the course that you have described, would not that indicate danger to you?

A. It did when she showed her green light, not before that.

Q. You could see that she (*Sylvania*) was swinging by her lights, couldn't you?

A. Yes, sir.

Q. Quite contrary to her signals?

A. Yes, sir.

Q. And then she proceeded in that course from the time she was abreast of *The Trevor,* at least until just before the collision, when you say you saw her swing slightly as if under a port helm?

A. Yes, sir.

Q. Where was she when she showed her red light?

A. About a length and a half away—a length away.'

Under these conditions *The Bessemer* did not stop nor blow the danger whistle.

Witness Bugge says that he exchanged one blast signals with *The Sylvania* the second time she was abreast of *The Trevor;* the third time a little past *The Trevor,* when she was swinging on her starboard wheel. He then said to the master: 'There is something wrong with that fellow—he is swinging on his starboard wheel instead of on his port wheel, I believe.' Captain: 'Yes, I believe he is, we will have to stop and back.' Mate: 'Yes, we will.' But he did not stop, for the mate says that about that time he blew the fourth signal and then said to the master: 'We will have to back. He is swinging and we will never clear him.' Captain: 'All right, back her.'

The master and the mate of *The Bessemer* substantially corroborate each other in their testimony, which clearly shows that the danger was apparent all this time and yet *The Bessemer* was not backed nor danger signals given. 'The lesson that steam vessels must stop their engines in the presence of danger or even of anticipated danger is a hard one to learn, but the failure to do so has been the cause of the condemnation of so many vessels that it would seem that these repeated admonitions must ultimately have some effect.' *The New York,* 175 U. S. 187.

What was *The Bessemer's* duty under her own testimony? The master of *The Bessemer* saw that *The Sylvania* was not doing her duty under the passing agreement, which he says had been reached, and that if her course was kept up a collision was inevitable, yet he relied upon *The Sylvania* to change her course so as to pass according to the agreement as *The Bessemer* understood it, and he continued to rely upon *The Sylvania* to avert the accident until it was too late for either to do so. To *The Bessemer* it was a clear case of apparent danger of collision with time to avoid it. She could have stopped or blown the danger signal when it was first apparent that *The Sylvania* was less than three-quarters of a mile away, moving rapidly and in violation of the passing agreement. *U. S. vs. Erie R. R. Co.,* 172 Fed. 50, 96 C. C. A. 538; *Hall vs. Chisholm,* 117 Fed. 807, 55 C. C. A.

31; *Lake Transportation Co. vs. Gilchrist Transportation Co.,* 142 Fed. 89, 73 C. C. A. 313; *The Elphicke,* 123 Fed. 405, 59 C. C. A. 286.

As has been seen, it appears that the crew of *The Bessemer* heard the signal of one blast from *The Sylvania* when three-quarters of a mile away, which was twice repeated. She was showing her green light when she should have taken the opposite course and shown her red light. *The Bessemer* was apprised of the fact that *The Sylvania* was violating a rule of navigation and prompt action was required to avoid a collision. 'Nothing is better settled than that if a steamer be approaching another vessel which has disregarded her signals or whose position or movements are uncertain, she is bound to stop until her course be ascertained with certainty.' *The New York* (supra). And again: 'And if the vessels shall have approached within a half a mile of each other, both shall reduce their speed to bare steerage way, and if necessary stop and reverse.' Rule 28 of the White Law. If it were permissible for those responsible for the navigation of a great vessel, having in their care human life as well as property, to speculate as to whether they should adopt the safest course or one least safe, when both are equally open to them in the face of real or apparent danger, perhaps *The Bessemer,* under all the facts, should ecape liability in this case. But such speculation should not be tolerated or excused. Navigation is fraught with such great danger, both to life and property, that it would be most hazardous that the court should approve a rule of action less exacting than that which requires of the officers of vessels, when in the face of danger, real or apparent, and in all cases if within the range of possibility, to adopt that course that is the safest and which offers the greatest assurance of avoiding such danger."

See also the following cases:

*Albert Dumois,* 177 U. S. 240.
*The J. B. King,* 106 Fed. 980.
*Mallory Burns,* 106 Fed. 86.
*Oceanic,* 61 Fed. 359.
*The Gerry,* 161 Fed. 413.

*The Kingston,* 173 Fed.
*Wilder S. S. Co. vs. Low,* 112 Fed. 161.
*New York, etc. Co. vs. New York,* 42 N. E. 1086.
And cases cited in the *New York supra.*
*The Strathleven,* 213 Fed. 975, 978.
*Pittsburg S. S. Co. vs. Duluth S. S. Co.,* 222 Fed. 834, 835.

In the case of *The Duluth S. S. Co. vs. Pittsburg S. S. Co.* (supra), and also in the case of *Albert Dumois* (supra), the court adopted the same method which we are pursuing in this case, of considering the fault of a vessel solely upon the testimony of the officers and crew of that vessel, irrespective of the testimony on the opposing side. In the *Duluth* case it appears from the testimony of *The Bessemer* that she had blown four separate signal blasts to *The Sylvania,* indicating a port to port passage, and that these passing signals had all been assented to by *The Sylvania.* It also appears in that case that the two vessels were in plain sight of each other, so that each vessel could determine by sight the navigation being pursued by the other vessel.

In the case at bar there is no contention on the part of the "Strathalbyn" that any of her passing signals were answered or assented to. Further than this, it must have appeared to a competent navigator on the "Strathalbyn" that her passing signals were not answered or assented to for the reason the "Virginian" could not see either the "Strathalbyn" or her signal lights, and therefore had no information whatever as

to the location or navigation of the "Strathalbyn," except as indicated by her whistles. These facts make the navigation of the "Strathalbyn," as testified to by her own officers, much more culpable than the navigation of *The Bessemer* in the above case. *The Bessemer* might, with some reason, have assumed that *The Sylvania* would, under the circumstances, have changed her course in time to avoid a collision, and navigated in accordance with *The Bessemer's* passing signal; or she might well have assumed that *The Sylvania,* having *The Bessemer* in full sight, would have indicated the danger to *The Bessemer,* if for any reason she did not intend to navigate in accordance with *The Bessemer's* passing signals. No such assumption was possible to the officers of the "Strathalbyn" in the case at bar. The "Strathalbyn" had heard the "Virginian" and "Flyer" exchange passing signals in the vicinity of Pulley Point some minutes before the "Strathalbyn" blew her first passing signal to the "Virginian," and she therefore knew there was some one on watch on board the "Virginian," attending to her navigation and answering signals when necessary or permitted; that is, when she could see the vessel which had initiated the signal. She had also watched the bearing of the "Virginians" lights for some time and knew that that vessel was approaching her on a practically head-on course. She further knew that there was danger of collision unless the courses of the two vessels were changed. She gave the "Virginian" a pass-

ing signal when the two vessels were not over a half a mile apart, and upon the "Virginian's" failure to answer this signal, it was the "Strathalbyn's" imperative duty, under the above cases, to have immediately taken the headway off the vessel and brought her to a standstill, until she had reached an agreement with the "Virginian." Instead of doing this, she proceeded full speed ahead for a minute or more and gave the "Virginian" a second passing whistle, which likewise remained unanswered.

In the case of *The New York,* cited above, in considering the navigation of the *Conemaugh,* Justice Brown states her duty to have been as follows:

"As the *Conemaugh* steadied her wheel to starboard her watch made out below the tow and about a mile distant the white and red lights of *The New York,* apparently somewhat on the American side of mid-channel, and promptly signalled her with two blasts of her whistle, indicating that she would pass her to the left. No answer was received from *The New York.* Under such circumstances it would have been more prudent for the *Conemaugh* to stop and wait a few minutes until the tow had drifted down and left the channel clear below her; but inasmuch as there was a clear space of five hundred feet of navigable water between the last barge and the Canadian bank of the channel, we should hesitate to condemn her for this fault were there no others contributing more immediately to the collision.

Receiving no answer to her first blast, the Conemaugh, when the two steamers were about three-quarters of a mile apart, repeated her signal of two blasts—*The New York* then showing her mast head and both colored lights. Again no reply was made by *The New York.* The *Conemaugh,* which had then

ported, and was heading towards the Canadian shore, and about four points from the direct course down the river, gave a third signal of two blasts, *The New York* continuing to show all three of her lights and being apparently close to and between the second and third barges of the tow. *The New York* made no answer to this third signal. The duty of *The Conemaugh* at this juncture was plain. *She should have stopped her engines after the second signal and, if necessary to bring her to a complete standstill, have reversed them.*" (Page 201.) (Italics ours.)

The court will note that in the *New York* case, at the time the *Conemaugh* gave the first signal, the vessels were more than a mile apart, were not headed directly towards each other, and that there was an obstruction in the channel between the two vessels, and that under these circumstances the court did not feel that it should hold the *Conemaugh* at fault solely for her failure to stop upon receiving no answer from the *New York* to her first passing signal. Upon the other hand, at the time of giving the second signal, the two vessels were still three-quarters of a mile apart, but were headed towards each other, and under these circumstances the court held it the imperative duty of the *Conemaugh* to have stopped and reversed so as to come to a standstill.

In the case at bar, at the time the "Strathalbyn" gave to the "Virgiinian" the first passing signal, the vessels were considerably less than half a mile apart and headed directly towards each other, and had been so headed for some minutes prior to this time. In view of this situation, we think it was the imperative

duty of the "Strathalbyn" to have immediately stopped and come to a standstill upon failing to receive an answer from the "Virginian" to her first whistle. However, instead of doing this, she proceeded full speed ahead for a minute or more and gave the "Virginian" a second passing whistle, which likewise remained unanswered. At this time, according to her testimony, she noticed the "Virginian" was navigating directly contrary to her ("Strathalbyn's") passing signals. At this time the "Strathalbyn" testifies that she stopped her engines, but under the rule as laid down in *The New York* this was clearly insufficient. Having blown two passing signals and received no answer, it was her imperative duty, provided she had not done so after blowing the first passing whistle, to have stopped and reversed immediately, and this became the more imperative when it was noticed that the "Virgiinian" was navigating contrary to the passing signals. This situation brings the case at bar within the *Duluth* case. It was certainly a "clear case of apparent danger of collision" in time for the "Strathalbyn" to have avoided it, and, as stated in the *Duluth* case, "she could have stopped or blown the danger signal when it was apparent that *The Sylvania* was less than three-quarters of a mile away, moving rapidly in violation of the passing agreement."

In the case at bar, no passing agreement had been reached, which made it the more imperative on

the part of the "Strathalbyn" to have immediately stopped and reversed and blown the danger signal when it became apparent to her that the "Virginian," which was then considerably less than half a mile away, was navigating contrary to her ("Strathalbyn's") passing signal. Instead of reversing at this time, the "Strathalbyn" proceeded under a full momentum for a minute or more, when, according to her testimony, the "Virginian" shut out her red light entirely, was showing her green light against the "Strathalbyn's" red light and was opening her range lights so as to indicate that she was proceeding directly across the "Strathalbyn's" course. In this situation it would have been apparent to any one, whether a navigator or not, that there was imminent danger of collision, but instead of reversing, even at this late time, the "Strathalbyn" persisted in blowing a third passing whistle and shortly thereafter, when collision was inevitable and at a time when neither vessel could possibly avoid it, the "Strathalbyn" blew a danger whistle and *after blowing such whistle, reversed her engines.* Such navigation cannot be too strongly condemned. If the "Strathalbyn" had reversed even at the time of blowing her second whistle, the collision would have been avoided as it is shown by the testimony cited at pages 109-111 of this brief that at the time of the collision both vessels were practically without forward motion.

The court will remember that during all of this time the "Virgiinian" had not assented to nor answered a single passing whistle blown by the "Strathalbyn." Under the rules for the prevention of collisions, the "Virginian" was prohibited from assenting to or answering the "Strathalbyn's" signals, and the lower court has so held, and as we have repeatedly stated, this refusal to assent to such passing signals indicated to the "Strathalbyn," in the only manner which is provided or permitted by the Inland Rules, that the "Virginian" could not see the "Strathalybn." The "Strathalbyn" had the "Virginian" in full sight, knew the course she was steering, and could see by the bearing of her lights, and especially by the location of her range lights, a variance, if any, in the "'Virginian's" course. She had indicated this knowledge to the "Virginian" by blowing her passing signals.

From the testimony of the "Strathalbyn's" pilot, he must have been in considerable doubt as to the course and intention of the "Virginian," especially if the "Virginian" was deliberately crossing his course, as he has testified that she was doing.

Rule III of Article 18 of the Inland Rules provides as follows:

"If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other from any cause, the vessel so in doubt shall immediately signify the same by giving several short

and rapid blasts, not less than four, of the steam whistle."

Rule I of the Pilot Rules of the Inland Waters of the Atlantic and Pacific Coasts provides:

"If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle, the danger signal. Whenever the danger signal is given the engines of both vessels shall be stopped and backed until the headway of the steamers has been fully checked; nor shall the engines of either steamer be again started until the steamers can safely pass each other and the proper signals for passing have been given, answered and understood."

In the *Duluth* case (supra), *The Bessemer* was held guilty of negligence "in not stopping and reversing her engines before the vessels came so close together that it was impossible to avoid the accident, and in not blowing the alarm signal."

In the case of *The Volund,* 181 Fed. 643, a steamer was found at fault in the case of a collision with a yacht under the very same circumstances as the case at bar, the steamer having signalled to the yacht and having received no answer or assent thereto.

"But whether the vessels were or were not end on, or nearly so, the ship was at fault on her testimony for violating Rule III of Article 25, which directs that 'if when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other from any cause, the vessel so in doubt shall imme-

diately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle,' and she was also at fault for violating the Inspectors' Rule, which provides that if in the situation quoted from the statute the vessels have approached within half a mile of each other, 'both shall be immediately slowed to a speed barely sufficient for steerage way until the proper signals are given, answered, and understood, or until the vessels have passed each other.' "

In the above case, the steamer was also held at fault for attempting to pass the yacht on the left under a two-blast signal, without having obtained the consent of the yacht; also for not sounding alarm signals, but keeping at full speed and repeating her two blasts when *her first signal was not answered;* and also for not stopping and reversing when danger of collision should have been obvious.

Certainly, when the "Strathalbyn's" first signal had remained unanswered and when her second signal had remained unanswered, and if it was noticed, as testified to by the "Strathalbyn's" pilot, that the "Virginian" was changing her course contrary to said signals so as to make a collision imminent, the "Strathalbyn" at this time was in doubt as to the course and intention of the "Virginian," and it was her duty, under the rules, to have immediately signified such doubt and to have stopped and reversed her engines. There seems to us to be absolutely no escape from this conclusion. Captain Beecher, pilot of the "Strathalbyn," testified that he thought this was negligent navigation on the part of

the "Virginian" (Apostles, p. 226), but we submit that under the authority of the *New York* case and the *Duluth* case, he was not permitted to indulge in any such speculation, but was required to make use of the danger signal, which is provided for exactly such emergencies.

Without going into Captain Beecher's testimony in detail, we would ask the court to examine the same at pages 224-5-6-7-8 of the Apostles, from which it is clear that this pilot does not give a frank statement of the situation as it appeared to him at the time, but is obviously trying to escape the effect of his failure to blow the danger signal. He testified that his only reason for stopping the "Strathalbyn's" engines, after blowing the second whistle, was that his vessel was headed directly into the beach, by reason of his porting at the time of blowing the single blast whistle, and that this had nothing whatever to do with any maneuver on the part of the "Virginian"; that he stopped his vessel because of the shallow water directly ahead of him; that he merely concluded that the "Virginian" was being badly steered and that she would swing out again in time to avoid a collision. On pages 226-227 he testified as follows:

"Q. What conclusion did you reach to your second whistle at so close a distance getting no answer, and losing his red light?

A. Well, I don't know that I can explain that, Mr. Hughes. One of my conclusions was that probably he may have given the order port and the quartermaster

in the closed wheelhouse had put the helm starboard; that was merely a mental thought through my mind. I could not understand what he was doing.

Q. If such a mistake had been made, it would create the imminence of a collision at once?

A. *Certainly, if one starboards and the other ports, you are bound to come together.* (Italics ours.)

Q. What conclusion did you reach at his failing to answer your port whistle—your second port whistle?

A. I did not reach any. I thought they were very slack in their business, but if they had as many men as they usually have, some of them must have heard.

* * * * * * * *

A. I could not do anything else, I was in irons.

Q. That is why you did?

A. Yes, sir.

* * * * * * * *

Q. Why did you give that third port whistle?

A. I could not help myself. He was forcing me into the beach. I had nothing else to do. * * *

Q. What did occur to you as an explanation to your mind, as a pilot, of the fact that a vessel whose lights you could plainly see, that was so near that they must necessarily hear your whistles, gave you no answer?

A. I cannot state. I do not know."

In contradiction of the above testimony, we quote the testimony of this winess given before the United States Inspectors of Hulls and Boilers immediately after this collision.

"I made the remark after I blew my first whistle, the red light seemed to be getting dimmer, but the green light very much brighter. I said 'I wish to God he would get his helm to port and show me his red more.' I then blew, not hearing from him, I blew my second blast to him and stopped her right then because the red was getting dimmer all the time." (Apostles, p. 233.)

In order to back up his explanation and in an attempt to evade the requirements of the danger whistle, this witness, upon cross-examination, placed his location on the chart well inside of Pulley Point and close to the beach. (Indicated by the letter B on chart marked Libellants' Exhibit "B.") An examination of this exhibit will show that the location of the "Strathalbyn," as placed by Captain Beecher, is utterly absurd. In order for the "Virginian" to have ever reached this location she would have to have made a complete circle around Pulley Point and headed directly into the beach, and we doubt if it would have been possible for the "Virginian" to have made such a quick turn. If she had made any such change in course it must have been for the deliberate purpose of running down the "Strathalbyn."

After going over this matter with his proctor, the witness saw the absurdity of his testimony and was recalled on the following morning for the purpose of correcting the same. At this time he placed his position from one and a half to two miles away from where he had placed it the day before, at about mid-channel or about one and a half or two miles from shore, where there was no shallow water and where there was no possibility of his ship being in irons, or of any fear of it being run on the beach. (Apostles, p. 277-8-9.) This latter position as shown by the letter B3 on Libellants' Exhibit "B" is much nearer where

the collision actually took place. This latter testimony absolutely destroys the pilot's explanation as to his reasons for stopping and shows conclusively that he stopped because of the imminent danger of collision with the "Virginian."

This contradiction in the testimony of the most important witness on the "Strathalbyn,"in the most important detail of the entire case, tends strongly to discredit his entire testimony in the case. We submit that Captain Beecher's testimony, despite his apparent attempt to avoid it, shows that he was in considerable doubt as to the course and intention of the "Virginian," and that he should have blown a danger signal, certainly not later than the time he blew his second passing signal.

There is another fault on the part of the "Strathalbyn" which we desire to discuss before leaving this phase of the case. In our opinion this particular fault is most serious as the collision could not otherwise have occurred. It will be noted in the pleadings of the Strathalbyn Steamship Company it is alleged that at *each time of blowing the port passing whistles to the "Virginian," the vessel was ported so as to throw her to starboard and give the "Virginian" further clearance.* The Pilot Rules of Inland Waters of the Atlantic and Pacific Coasts provide:

"One short blast of the whistle signifies the intention of or assent to the steamer first giving the signal to direct course to own starboard."

This is similar to Rule 28 of the International Rules.

The purpose of this signal, therefore, is to signify to an approaching vessel that the vessel blowing such signal blast sees such approaching vessel and is changing her course to starboard for the purpose of avoiding such vessel.

In the present case it is testified by the "Strathalbyn's" officers that her course was changed to starboard at the time of blowing each of the three passing signals. Captain Beecher, pilot of the "Strathalbyn," testified that at the time of giving the first passing whistle to the "Virginian," he ordered the wheel of the "Strathalbyn" ported, so that she was headed just inside of Pulley Point, Pulley Point being about a half a point off the "Strathalbyn's" port bow (Apostles p. 223); that upon giving the second passing whistle to the "Virginian," the "Strathalbyn" was again ported so that she was headed inside of Pulley Point, and at the time of giving the third passing whistle, the "Strathalbyn" was again ported so that she was headed more towards the land in a southerly and easterly direction (Apostles, p. 209); that he changed her course at least three and a half points to starboard. (Apostles, p. 232.) This testimony is substantiated to some extent by the quartermaster at the wheel of the "Strathalbyn." (Apostles, p. 329-330.)

This testimony is manifestly untrue, as the "Strathalbyn's" own witnesses claim that the two vessels came together at an angle of contact at from three to three and a half points. The testimony of the independent expert surveyors who surveyed these vessels after the collision shows conclusively that the vessels came together head on, or nearly so, and that the damage to the vessels could not have been caused if the vessels had come together at any considerable angle. (Erissman, p. 1113, p. 1116; Gibbs, p. 1134, p. 1142; Fowler, p 1149-1150; Sprague, p. 1398.) The lower court, after an examination of this evidence, has found as a fact that the vessels did come together head on:

"It is clear that the vessels, on opposite courses, came into practically a head-on collision. Probably the courses were not over a point off of being directly opposite. This *conclusion is at variance with much testimony as to the repeated porting of the helm of the 'Strathalbyn,' the change in the 'Virginian's' course to port and other testimony, expert and otherwise; but all of this is overborne by the evidence of contact left upon the vessels after the collision.* (Italics ours.)

The 'Strathalbyn,' at the time of the collision, had a six degree list to starboard. The 'Virginian" had no list. The stem of the 'Virginian" struck across the stem of the 'Strathalbyn' at the 29-foot mark. Above that point, the stem of the 'Virginian' entered the port bow of the 'Strahalbyn.' Below that point, the stem did not enter the hull of the 'Strathalbyn,' but the starboard bow of the 'Virginian' moved, in contact, aft along the starboard bow of the 'Strathalbyn,' the forefoot of each vessel passing by that of the other.

The lower structure of the 'Strathalbyn' being stronger than the upper and able to fend off to star-

board the 'Virginian,' whose stem and bow remained rigid throughout, the stem of the 'Virginian' above the 29-foot mark, as it entered the upper part of the 'Strathalbyn,' instead of following a prolongation of the line of approach and contact, was deflected through to the starboard bow of the 'Strathalbyn,' along a line corresponding to that of the latter's starboard bow, below the 29 foot mark. The stem of each vessel is practically perpendicular fore and aft—that is, with no overhang forward, so that there could have been no contact with the 'Strathalbyn's' port bow above the 29 foot mark before that had with the starboard bow below." (Apostles, pp. 1427-1428.)

The "Strathalbyn's" failure to port her helm and change her course to starboard in accordance with her three separate single blast whistles was clearly a violation of a statutory rule.

"But, when as in this case, a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was * * * a contributory cause of the disaster. In such a case the burden rests upon the ship of showing, not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been. Such a rule is necessary to enforce obedience to the mandate of the statute."

*The Pennsylvania,* 19 Wall, 125, 136.
*Yang Tsze Ins. Ass'n. vs. Furness,* 215 Fed. 859.
*The Thielbek,* 218 Fed. 251.

"The signals in this article (28) are compulsory and not optional as in the corresponding article of previous regulations. The consequences of neglecting them, and of using them improperly do not seem to be yet fully appreciated by officers. Failure to comply with the article is an infringement of the regulations

carrying with it a presumption of liability for the collision.

* * * *

It may be worth while to quote some of the reasons which influenced the Conference (International Marine Conference held in Washington, October 16 to December 31, 1889) in framing the rule. In reply to the German delegate who argued that it is of no importance for the holding on vessel to know what the other vessel is doing since she herself is not at liberty to do anything before there is immediate danger, before the last minute, the British delegate said 'The learned delegate from Germany has asked, What is the advantage to the holding-on vessel? I venture to say that it is a very great advantage to the holding-on vessel to know that the other vessel is going to act; that she sees her. It comes to this: It says "I see you, I am going to keep out of your way." * * * I say that it is a very great advantage for a small vessel to know that the large steamer sees her and is taking proper steps to keep out of her way.' "

*The Law Relating to the Rule of the Road at Sea,* by David Wright Smith, pp. 252-3.

These single blasts blown by the "Strathalbyn" indicated to the "Virginian" that the vessel ahead of her which she could not see (The "Strathalbyn") could see her (The "Virginian"), knew her location and course and was directing her course to starboard, a maneuver which she was taking with reference to the "Virginian." *If the "Strathalbyn" had maneuvered, as she indicated she was doing, there would have been no collision.* These vessels collided, at the same angle and upon the same course which they had been approaching (Apostles, p. 889), that is head on or nearly so. The "Virginian's" course being SE¼S to SE½S

(Apostles, p. 1157) and the "Strathalbyn's" course being NW½N (Apostles, p. 208), so the "Virginian" was probably slightly on the port bow of the "Strathalbyn." *If the "Strathalbyn" had ported ½ to 1 point at any one of the three times when she signaled the "Virginian," she would have passed clear to port.* We consider this as a grave fault on the part of the "Strathalbyn" and as being directly responsible for this collision.

"The Thames Rule, which is identical in language with the International Rule, is this, that if a signal is blown, either a port or a starboard helm signal, it indicates the direction in which the course of the ship is being altered and that only, and when one has got to deal with such rules, one has to remember that we cannot allow custom to come in between, though I am told that custom gives to the signal, not the meaning 'I am directing my course to starboard, or port,' but 'I am going to pass you port to port or starboard to starboard.' In this case the result of breaking that rule is this collision. * * * Therefore the view I take is this, that the Henry Morton is to blame for blowing a starboard helm signal and not starboarding, and she is to blame also because she had come into court with a story which, on the face of it, is an untrue one."

> *Cairn vs. Henry Morton,* decision by Mr. Justice Bargrave Deane in Admiralty Division April 9, 1908, reported Shipping Gazette, cited in Smith's Law relating to Rule of the Road at Sea, p. 256.

(D) THE "STRATHALBYN" WAS AT FAULT IN THAT SHE CARRIED NO RANGE LIGHT.

We do not desire to take up very much of the court's time in discussing the fault of the "Strathalbyn" in not carrying range lights, as we are willing to rely upon the faults which we have already discussed, as showing primary gross fault on the part of the "Strathalbyn." Although it was alleged in the original libel that the "Strathalbyn's" "range lights" were properly set and burning, it was admitted by her officers that she carried no range light. She had regular electric range lights, but as she was using oil lights on the night of the collision, and probably expected to repair her dynamo within a short time, she did not go to the trouble of rigging a range light on her after mast. It is our contention that a heavily loaded vessel with a 6° list using temporary oil lights for the first time and knowing that during the course of the night she would have to navigate through the crowded and congested waters of Puget Sound in the path of numerous steamers, as a matter of precaution and good seamanship should have taken every precaution to render herself visible to approaching vessels by carrying an after range light.

While the Inland Rules applicable to the waters of Puget Sound do not absolutely require "seagoing vessels" to carry range light, they provide, Art. 2 (f) "all

steam vessels (except seagoing vessels and ferry boats) *shall* carry * * * a central range of two white lights; the after light being carried at an elevation at least fifteen feet above the light at the head of the vessel, etc." Art 2 (c): "A seagoing steam vessel when under way *may* carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one, etc."

This last subdivision (c) of Art. 2 of the Inland Rules is an exact copy of subdivision (c) of Art. 2 of the International Rules which are applicable to all vessels navigating the high seas. With the exception that words "seagoing steam vessel" as it appears in the Inland Rules, the words "steam vessel" are used in the International Rules. In other words, the International Rules provide that steam vessels *may* carry range lights, while the Inland Rules provide that *all steam vessels* (*except* seagoing vessels and ferry boats) *shall* carry range lights, and that such "seagoing vessels" *may* carry range lights. The above provision of the International Rules first appeared in the Rules adopted in 1890 by enactment of Congress; prior to that time the Rules provided that "seagoing steamships" when under way should carry a masthead light,

port side light and starboard side light *and no other.* It will be noted that the Rules of 1890 change the words "seagoing steamships" to "steam vessels," not limiting its application to "seagoing steamships," and that the words "and no other" are omitted, and clause (c) under Art. 2 added, providing that steam vessels *may* carry range lights. Under the rules in effect prior to the adoption of the Rules of 1890, the Supreme Court of the United States held in the case of *Belden vs. Chase,* 150 U. S. 674, that a "pleasure yacht" constructed for and adapted to ocean navigation, had been upon the ocean and had just been authorized to navigate for one year the waters of any ocean route, was an "ocean going steamer" within terms of the Rules then in effect (the collision having taken place in 1882 on the Hudson River), and also within terms of local rules adopted by supervising inspectors for navigation of the Hudson River, which provided:

"Rule 3. All ocean going steamers and steamers carrying sail, shall, when under way, carry * * * (a) at the foremast head, a bright white light," etc.

It will be noted that both the International Rules then in effect and local rules applicable to the Hudson River, provided that "ocean going steamers" shall carry two side lights, masthead light *"and no other,"* leaving no option as to carrying range lights. Justice Brown, an eminent authority in Admiralty Cases, in a concurring opinion, held that the yacht was invested with a double character:

"First, as an ocean going steamer, and second as a coasting vessel, and that, when navigating the inland waters of the country, she was bound to conform to the usages of those waters."

We merely cite this case to show the significant changes in both the International Rules and the Inland Rules, and the undoubted reasons for such changes. Justice Brown states in this case, p. 704:

"Even admitting that ocean vessels when navigating inland waters are not *bound* to carry these range lights, *because it is not contemplated that they shall navigate these waters,* I am clearly of the opinion that yachts which ply chiefly between ports and places within the United States and upon the inland waters of the country, should carry them. It seems to *me an exceedingly dangerous practice * * * to permit vessels not carrying the lights appropriate to inland navigation to navigate the narrow waters of the country. Vessels navigating these waters are entitled to expect that other vessels which they meet are required to carry the same lights which they carry and any distinction in that particular in favor of yachts is liable to create uncertainty and confusion with regard to the character of the approaching vessel.* * * *

If the case required it, I would even go further and say, as did the dissenting judge when this case was heard before the general term (34 Han. 571-577)' that *ocean going steamers when navigating the inland waters of the country, and not under sail should carry the range lights provided by Rule seven."..* (Italics ours.)

It is also to be noted that the Rules were changed shortly after the above collision, so as to *permit* the use of range lights upon ocean going steamers navigating inland waters. As stated by Justice Brown, it was not provided that ocean going vessels should use range

lights because it was not contemplated that they would navigate inland waters. The necessity for the use of such range lights when navigating inland waters is pointed out by Justice Brown, and the rules were changed so as to *permit* their use.

The reasons of the International Marine Conference (1899) in proposing this change in the rules to permit the use of range lights is shown in the following discussion of the delegates to said conference:

"PROTOCOL OF PROCEEDINGS, INTERNATIONAL MARINE CONFERENCE, 1899. RANGE LIGHTS.

Captain Shackford (United States): "Some kind of a range light, in addition to the present mast-head light now carried by steamers, seems to be almost imperatively demanded. Under the present system, when a steamer's mast-head and either side-light is visible, it is impossible to judge within an arc of at least nine points which direction the steamer is headed, and this difficulty is a great element of uncertainty in judging what course it is most prudent to take on first observing the lights of an approaching vessel, particularly in misty or hazy weather. I think this can not be disputed. (Page 227.)

With the addition of the range-light proposed, this arc of nine points is at once reduced to one point, or at most two points; and it appears to me that if this element of uncertainty can be reduced without adding any lights to the present system, as I claim can be done by this change, it would be of immense advantage to those in charge of steamers."

Mr. Goodrich (United States): "In my judgment it is a better system of lights than the running side lights with the mast-head light, because the instant a vessel deflects from her course when she is lighted with range lights, that instant the observer upon the

approaching vessel can see that she has altered her course, and can see it instantly when the course has been deflected even a half point. Of course, that can be determined upon a vessel which is fitted with the mast-head light and the running side lights within possibly an angle of three or four or five or six points." (Page 228.)

Captain Mensing (Germany): "But one great advantage is left, and that is, that if these range lights are seen right ahead and are heading for us, we see at once, unmistakably, what that other ship is doing—whether she has ported or starboarded. We see at a glance and we get that in our minds without any effort. We know that the ship is going just that way, and if we want to get out of her way we do a certain thing. This is a great advantage, and it is an advantage worth thinking about.

Therefore the committee have recommended that such a system should be permitted for the optional use of steamers." (Page 232.)

Captain Shackford (United States): "I have nothing to add to my argument in favor of this light; but I hold firmly to the opinion, after twenty years' experience as watch officer and master to the Atlantic trade, that some method could and ought to be adopted by which the approximate course a steamer is heading could be seen at a glance, certainly much nearer than the eight or nine points of the present system. In steamers going in opposite directions in misty or hazy weather, where lights can be seen only a short distance, every steamship master knows that the interval from the time when the mast-head light of an approaching steamer is first sighted, on either bow, to the time when side lights are first seen, is an exceedingly anxious one. He can only keep his course until the side lights come into view, and then, if it is a steamer crossing, it may be too late to avoid collision." (Pages 280-281.)

Mr. Goodrich (United States): "In the present system, as every one of us knows, there is an arc of ten

points in which no one can say where the sailing vessel is, or in which direction she is heading." (Page 371.)

EXTRACT FROM REPORT OF COMMITTEE ON LIGHTS

The greatest advantage of the above system (range lights) in the opinion of the committee, is that a small change in the course of a steamer approaching end on, or nearly so, is at once and unmistakably indicated.

CONCLUSIONS: Range lights if properly placed and fitted indicate under certain circumstances a ship's course in a more accurate way than at present. This is of some advantage, and therefore in the opinion of the committee the optional introduction of some such system may be proposed for the favorable consideration of the Conference. (Volume III, page 74.)"

In the case of *"The Conoho,"* 24 Fed. 758, decided under the old rules where "ocean going vessels" were prohibited from using range lights, the court, in commenting on the failure of a coasting vessel, which by the rules was required to carry range lights, says at page 760:

"The rule for inland waters and narrow channels differs in one respect from that of *open waters.* It not only requires the two colored side lights, but it requires the two white range lights to be up and burning. The red and white side lights only show in what *general direction* the steamer is going; they do not show with accuracy *the course* held by the steamer moving in that general direction. In narrow waters, it is necessary to safety that this *course* shall be known; and the high light aft, and the lower light forward, fixed on a range with the center of the vessel, as required by Rule 7, shows this course. These two sorts of lights are probably more important in narrow channels than the red and white lights. They are both essential. It is for this reason that every steamer navigating narrow waters at night is required to have these lights up. If

a steamer has them not, it is in fault; it is *grossly* in fault. It takes the risk and responsibility of whatever may happen when they are not up. * * * There can be no *safe* navigation of our inland waters by steamers at night unless the *master of each steamer knows* that these lights are up at every moment while he is in motion."

The comments of the court in the above case as to the necessity of using range lights in inland waters, and the reason therefor, are even *more* applicable to *large* "ocean going steamers" than to small inland steamers. These range lights are required by law to be visible for a distance of at least five miles, and as stated by the court in *"The Conoho,"* they are so fixed that they give accurate and definite information to an approaching steamer of her *exact course,* while the side lights are only required to be visible for two miles, and at that distance only indicate the "general course" of the vessel carrying such lights. Of course, no such information is conveyed by a single masthead light. In close, restricted waters, where vessels navigate close to thickly inhabited shores, which are covered with white shore lights from farm houses and other habitations, it is practically an impossibility to pick out and to distinguish a single masthead light from these shore lights if they are anywhere near the same locality. Another fact which we desire to call to the court's attention is that Art. 11 of both the International and Inland Rules provides that a *vessel at anchor* shall carry forward "a white light in a lantern so constructed as to show a

clear, uniform and unbroken light visible all around the horizon at a distance of at least one mile." What is there is to distinguish the white anchor light from the single masthead light of a vessel under way?

Article 29 of the Inland Rules, being known as *Precautionary Rule,* provides:

"Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of the neglect of *any* precaution which may be required by the *ordinary practice of seamen* or by *the special circumstances of the case.*"

The changes in the Rules authorizing the use of range lights by ocean going vessels was undoubtedly made for the very reason stated by Justice Brown in the case from which we have cited. It was not originally contemplated that oceangoing vessels would navigate inland waters, but when it was found as commerce advanced and inland ports were opened as commercial ports, and were being used by oceangoing vessels in foreign commerce, the rules were so changed as to permit "oceangoing vessels" to use these range lights, whenever it was necessary for them in the course of their voyage to navigate inland waters in going to and from such ports, and when such voyages require that oceangoing vessels navigate these inland waters for any distance, we submit that both under the "ordinary practice of seamen" and common prudence for the protection of inland vessels, as well as such

oceangoing vessels, they are required to carry range lights. The rule is optional until such necessity for their use arises, but when such necessity *does arise,* then under Art. 29, if not under Art. 2, the carrying of such lights is as imperative upon "oceangoing vessels" as it is upon "inland vessels," and the necessity for their use by large oceangoing vessels is even more imperative. If ever the necessity for the exercise of "ordinary practice of seamen" and common produce requiring the use of range lights, arises, it certainly arose in the case of the "Strathalbyn." At the time of leaving Tacoma prior to the collision, the "Strathalbyn" was heavily loaded with lumber, having aboard 3,000,-000 feet, approximately one-third of which was on her forward and after decks, her forward deckload being some fourteen and a half feet high. She was lying very low in the water and had a 6° list to starboard. She presented a very deceptive appearance on the water and was mistaken by Captain Penfield of the "Indianapolis" for a sail boat. (Penfield Apostles, p. 984-985.) (Phillips, p. 1013.) Hofstetter thought it a tug boat. (Apostles, p. 613.) Her appearance was such that Captain Penfield after meeting her once and overtaking her once, expected that she would "butt" into some vessel. (Penfield, Apostles, p. 985.) (Phillips, p. 1015.)

Her electric lights were then out of commission on account of some trouble with her dynamo, and oil

lamps which have now gone practically out of use on large steamers, were brought into use on this night in the emergency. In view of the known fact that these lights had never been used before, and that at their best they were not equal in brilliancy to her electric lights, and the further fact that the vessel was deeply loaded and would have to travel some hundred miles in crowded inland waters, where it was known that she would meet or pass in the vicinity of numerous inland vessels, all using range lights, we submit that the master of the "Strathalbyn," as a matter of safety, prudence and good seamanship, was absolutely required by the Rules and by law to use *every precaution* to make his vessel as readily visible as possible, and that it was his absolute duty under such circumstances to have equipped his vessel with an after range light, and that his failure so to do is gross fault on the part of the "Strathalbyn."

The fault of the "Strathalbyn" in leaving the port of Tacoma at six o'clock at night on a voyage which she knew would carry her through the crowded waters of Puget Sound where she would meet numerous vessels, with dim auxiliary oil lights, with no range light whatever and with her side lights obscured by her deck cargo stanchions so that they could not be seen from ahead was the initial and proximate cause of this collision and without which fault the said collision would not have occurred.

Her grossly negligent navigation prior to said collision was also a proximate and contributing cause to this collision without which the said collision would not have occurred. If she had stopped and reversed when she received no answer to her first passing whistle or had given the "Virginian" a danger whistle at this time, the collision would not have occurred. If she had stopped and reversed when she received no answer to her second passing signal or had given the danger whistle at this time the collision would not have occurred. If she had stopped and reversed when she received no answer to her third passing signal this collision would not have occurred.

If she had navigated in accordance with her passing whistles by porting her helm she would have passed the "Virginian" in safety, port to port and this collision would not have occurred. These faults were all direct, proximate and contributing faults sufficient in themselves to account for this collision and the "Strathalbyn" is not permitted to escape liability by raising doubts as to the "Virginian's" navigation. Any doubts as to the "Virginian's" navigation or the contribution of her faults, if any, to the collision, should be resolved in her favor and in order to hold the "Virginian" for a contribution, it must clearly appear that she was guilty of faults, but for which the collision would not have happened.

*The Thielbek,* 218 Fed. 251.
*The Kirnwood,* 201, 201 Fed. 428.
*The New York,* 147 U. S. 72.
*The Nacoochee,* 137 U. S. 330.
*The Ludvig Holberg,* 157 U. S. 60.
*The Umbria,* 166 U. S. 404.
*The Pallanza,* 189 Fed. 43.
*The Gerry,* 161 Fed. 413, 419.

The recognized doctrine is thus stated by Mr. Justice Brown in *The Umbria,* 166 U. S. 404, 409:

"Indeed, so gross was the fault of the Umbria in this connection that we should unhesitatingly apply the rule laid down in *The City of New York,* * * 147 U. S. 72, 85, and *The Ludvig Holberg,* 157 U. S. 60, 71, that any doubts regarding the management of the other vessel, or the contribution of her faults, if any, to the collision should be resolved in her favor."

*The Victory,* 168 U. S. 410, 423.
*The North Point,* 205 U. S. 963.

"The *Careb* was grossly in fault for so arranging her lights and sails that upon occasions (such as this) there would be a considerable field of obscuration on one or both sides of her stern. * * * The faults of the *Careb* being thus primary, obvious and unexcusable, the evidence to establish fault on the part of the *Iberia* must be clear and convincing in order to make out a case of apportionment."

*The Iberia,* 123 Fed. 865.
(Circuit Court of Appeals, 2nd Circuit.)
*The Protector,* 217 Fed. 117, 121.

"The negligence of the *Willinocket* if not actually admitted is proved by such an overwhelming weight of testimony that it need not be considered on this appeal. The only question is, Did any fault on the part of the *Person* contribute to the collision? The faults of the *Willinocket* were so glaring, so numerous and so

fully do they account for the disaster that the court *should not be particularly astute in the endeavor to discover* some contributing fault on the part of the *Persian* committed at a time when unerrable judgment is not to be expected." (Italics ours.)

*The Persian* (C. C. A. 2nd Cir.), 224 Fed. 441.

II.

**The "Virginian" was not guilty of any Contributing Fault.**

(Assignments of Error 4, 5 and 6)

(a) The "Virginian" had been reversing approximately two minutes prior to the collision.

The court below held:

"On account of the general route of vessels at the point of collision, the signals exchanged between the "Strathalbyn" and the "Flyer" indicating a passage port to port and the signals given to the "Virginian" by the "Strathalbyn," the "Virginian" must have known approximately, the general position and course of the "Strathalbyn" and when those aboard her could not make out the "Strathalbyn" or see her lights, they should have reversed her engines not later than the second whistle. That she did so is testified to by witnesses for the "Virginian" with some detail.

The bell book in the engine room of the "Virginian" contains the following entries:

| Starboard | | Port | |
|---|---|---|---|
| O | 7:57 | O | 7:57 |
| MM | :58 | MM | :58 |
| O | :59 | O | :59 |
| V | 8:09 | V | 8:09 |

Indicating (O) "stop," 7:57; (MM) "full speed astern," 7:58; (O) "stop" (reversing), 7:59; (V) "slow ahead," 8:09. The engine room log book of the "Virginian" contains the following:

Stop, 7:57; full astern, 7:58; stop, 7:59; ahead slow, 8:09; her collision with S. S. "Strathalbyn" at 7:58 P. M.

Article 28 of the Inland Water Rules provides:

"When vessels are in sight of one another, a steam vessel under way whose engines are going full speed astern shall indicate that fact by three short blasts on the whistle." (30 Stat. L. 102.)

The three whistles of the "Virginian" were not given until after the "Strathalbyn's" danger signal, less than a minute before the collision.

Captain Beecher, pilot of the "Strathalbyn," testifies:

'Q. When the "Virginian" and "Strathalbyn" came into collision, did you notice whether or not the "Virginian" was backing?

A. When he blew his three whistles in answer to my danger signal, I looked along the hull which was very plain, and I called attention that she was just beginning to back; the backwater was just getting back under his starboard quarter.'

Captain Crerar of the "Strathalbyn" also testifies:

'Q. Did you observe whether or not the "Virginian" was backing at the time you came into collision?

A. Just before she struck us Captain Beecher directed my attention to the wash of her water coming up.

Q. Where did that appear to be?

A. Around her stern.

Q. How far forward?

A. It did not get forward at all, but was just beginning to come up. Captain Beecher remarked: "He is just going astern now."'

It is therefore concluded that the engines of the "Virginian" were not reversed until less than a minute before the collision, and that she was clearly in fault for not reversing her engines sooner." (Apostles, pp. 1429-1430.)

We have cited the lower court's opinion in full on this point for the purpose of showing the character of the evidence and all the evidence upon which the

court bases its finding that the "Virginian's" engines were not reversed until *after* the second whistle from the "Strathalbyn," and not until less than a minute before the collision. A careful examination of all the evidence upon this point shows not only that the court's finding is directly contrary to all the *positive testimony* in the case (as well as the physical facts shown by this testimony), but also that the evidence cited by the court, considered in connection with the other evidence, disproves rather than sustains the court's finding.

Considering first the testimony of Captain Beecher to the effect that "when he blew his three whistles in answer to my danger signal, I looked along the hull which was very plain, and I called attention that she was just beginning to back; *the backwater was just getting under his starboard quarter,*"
and of Captain Crerar:

"Just before she struck us Captain Beecher directed my attention to the wash of her water coming up. * * *

Q. How far forward?

A. It did not get forward at all, but *was just beginning to come up.*"

When it is remembered that the "Virginian" had been making 11 knots up to the time she heard the "Strathalbyn's" first passing whistle, and that her engines had been stopped for about one minute up to the time of hearing the "Strathalbyn's" second whistle, it

seems to us that the above testimony, if believed, proves conclusively that the "Virginian" had been reversing for some considerable time and that at the time testified to had practically, if not wholly, checked her forward motion. It is a simple matter of mechanics that the back water must have been moving forward faster than the vessel itself in order to get under the vessel's starboard quarter or forward of her stern *any distance whatever.* If a vessel is anchored or stationary in the water and reverses her engines, the throw of her propellers will cause the water to go forward of her stern immediately, but if the vessel has forward motion the throw of her propellers must be greater than her forward motion to allow the back water to come forward of her stern any distance. The vessel's forward motion would have to be practically checked before this back water could possibly go *any* distance forward of her stern. In fact, the common and only accurate way of determining when a vessel's headway has been checked is to note the position of the back water from her propellers—when this back water moves forward of the vessel's stern, it shows conclusively that the vessel's headway has been checked. Captain Clark W. Sprague, a master mariner of thirty-five years' experience, a pilot for eighteen years on Puget Sound and at the time of giving his testimony in this case the regular pilot of the Nippon Yusen Kaisha and Great Northern Railway (Apostles, p. 1365), testifying as an expert witness for claimant

and cross-libelant, testified on page 1368 of the Apostles as follows:

"Q. And in getting that result of killing your headway, what would you do, Captain? * * *

A. Full speed astern *until the back water came up under the bridge and then the ship is dead.*"

This testimony was given in connection with the "Virginian's" navigation, and not to expressly show that the back water coming forward to the ship's bridge indicated that the vessel was stopped. This manifest proposition had not then been questioned. It had not occurred to us at that time that any other construction would or could be placed on this fact, which appeared to us perfectly clear.

Captain Duffy, pilot of the "Virginian," testified as follows:

"Q. Captain, at the time of this collision did the "Virginian" have any forward movement?

* * *

A. I think she was about stopped.

Q. You think she was about stopped?

* * *

A. About stopped.

Q. What makes you think that?

A. The way they came apart. It was only a second when we seemed to come together and then went away again.

Q. Did you look over the side of the "Virginian" to see whether she was going forward through the water?

A. I could not tell. *The back water from the propellers was all the way forward of the bridge.*

Q. You could see the back water churned up—(interrupted).

A. *Yes; away forward of the bridge.*
Q. Could you have seen that water if the "Virginian" had had any considerable headway on her?
* * *
A. No sir, I do not think so."
(Apostles, p. 1167.) (Italics ours.)

This was at the time of, or just prior to, the collision. If the back water was forward of the bridge, the "Virginian" must have been practically dead in the water, so she must have been reversing more than a minute. Captain Green, of the "Virginian," testified that he could stop the "Virginian" when fully loaded from full speed ahead in five minutes. That on the night of the collision with her light load he should judge that with the "Virginian" stopped one minute and reversing *two minutes,* she would be dead in the water (Apostles, p. 840). Certainly, it would take *more than one minute reversing* to stop her dead.

The "Virginian" is 492 feet long. At the time the "Strathalbyn" blew the danger whistle, the "Virginian" was 600 feet to 800 feet ahead (Apostles, p. 228). The "Virginian" immediately blew three blasts (Apostles, pp. 317, 836, 892, 1162). This is the time when Beecher and Crerar saw the back water coming up under the "Virginian's" starboard quarter. The vessels must have been at least 500 feet apart at this time—which, together with the "Virginian's" length of 492 feet and the distance from the "Strathalbyn's" bow to her bridge—140 feet—(Claimant's Exhibit "5-4"), makes a total distance of over 1,100 feet from where

the witnesses were standing to the "Virginian's" stern. When it is remembered that these vessels were approaching each other head on, or nearly so, and that it was exceedingly dark at the time, it becomes apparent that if these witnesses saw the back water from the "Virginian's' propeller at all, it must have been a considerable distance forward of her stern, which conclusively proves that the "Virginian" had been backing for a sufficient length of time to practically check all forward motion.

The Court below seems to infer from the fact that the "Virginian" did not blow the three whistles until after the "Strathalbyn" had blown the danger whistle, that the "Virginian" had not reversed until this time.

After quoting Article 28 of the Inland Rules, the Court below says:

"The three whistles of the "Virginian" were not given until after the "Strathalbyn's" danger signal, less than a minute before the collision." (Apostles, pp. 1429-30.)

And again at page 1432:

"Article 28 positively directs three whistles when a steam vessel under way whose engines are going full speed astern, when the vessels are in sight of each other. It does not forbid such signals under all circumstances unless the vessels are in sight of each other."

It is apparent that the Court is wrong in this construction.

The directions of the rule are mandatory. The whistles are only to be blown when vessels are *in sight* of each other. This article is similar to Article 28 of the International Rules. The purpose of the rule is to notify an approaching vessel "I see you and am reversing my engines full speed astern to avoid you." As was said by the British delegate at the Washington Conference, when this article was under discussion:

"It comes to this; it says, 'I see you; I am going to keep out of your way.'"

*Smith's Law Relating to the Rule of the Road at Sea*, p. 253.

"It may be noted that compliance with the rule is required when

1. The vessels are in sight of one another.
2. A steam vessel under way is taking a course.
3. Such course is authorized or required by these rules."

*Marsden Collisions at Sea* (6th Ed.), p. 468.

Spencer on Marine Collisions in discussing Article 28 of the International Rules of 1890, after comparing this rule with a somewhat similar rule adopted in 1885, states at page 184:

"The latter rule (1890) is *imperative* and requires vessels approaching to indicate their course by the use of the prescribed signals, when taking any course provided by the rules, *when in sight of each other*. This qualifying clause is to be taken in its usual sense,

meaning that they are to be used when vessels are sufficiently near each other to make the use of signals necessary to an understanding of each other's course. Passing signals, under the international rules, are only permissible when vessels are in sight of each other and cannot be used as a means of communication when they are not visible to one another. They are not to be used in a fog or other state of the atmosphere when sight is cut off. Their use is only permitted when there is absolute knowledge of the relative position of the vessels such as sight alone can convey."

In the case of *The Aurelia,* 183 Fed. 341, the Court cited the above quotation from Spencer on Marine Collisions with approval as applying to Article 28 of the Inland Rules:

"Counsel seek to avoid the force of this rule by urging that the words 'in sight of' in Article 28 of the act, mean within half a mile of, and that it is only when vessels are within half a mile of one another that a steam vessel under way, whose engines are going at full speed astern shall indicate that fact by three short blasts of the whistle. * * * Article 28 must be understood as it reads. No other interpretation is permissible (p. 344). The purpose of the statutory rule is to insure the highest degree of safety; and strict obedience to that rule construed precisely as it reads will eliminate accidents." (p. 345.)

See also *The Parthian,* 55 Fed. 426; 25 Am. & Eng. Ency. of Law (2nd Ed.), 965.

This very question as to whether a vessel should be permitted to blow three blasts of her whistles when her engines were going astern, when the approaching vessel was *not in sight,* was discussed at some length at the Washington Conference (1899) and such permission was rejected by a vote of 15 to 5. The discus-

sion in connection with this proposal shows clearly that it was *not* the intention that such signals (nor any passing signals) should be permitted unless the other vessel is *in sight*.

"Admiral Nares (Great Britain). Mr. President, the intention of the committee is this: Under Article 19 the signal has been made compulsory, provided a vessel does a certain action, provided she starboards, or ports, or goes full speed astern; but while Article 19 has been made compulsory, it is not to be allowed except when the other vessel is in sight. The committee want to go beyond that. They will not allow the starboard, or the port signal to be made to a vessel which is not in sight, but they see no reason why the signal 'I am going full speed astern' should not be made whether the other vessel is in sight or not. You have already, under Article 12, told the vessel to stop her engines. Whether that will include that she will stop altogether will depend upon the captain. Suppose the captain goes full speed astern instead of merely stopping his way; why should he not indciate that action to the other vessel which is not in sight? You have already given another signal: 'You may feel your way past me with caution and I will stop by.' So that it is all dove-tailed together.

Under Article 19 you have made it compulsory to give the signals for the port and the starboard tack. I think they can only be made when the vessel is in sight; but yet this third signal, I am going full speed astern, may be made. While I am speaking about this there is one alteration which has been made. I am not quite clear whether we had a discussion about it or not; but I think we did. I think that it came up in the Conference, that the term 'I am' was not definite and we have altered it to 'my engines' are going full speed astern. We have kept the three short blasts which have been in use for ages.

Captain Malmberg (Sweden). Mr. President, I am still of the opinion that section (e) ought not to come into the regulations, because if a steamer, accord-

ing to the first paragraph in this article, stops her engines and then goes astern, section (b) covers her situation as being stopped—no I am mistaken in that. However, I should not like to introduce into rules like these a manoeuvre to be made by a steamer not having the other vessel in sight, as the issue of such a manoeuvre may, in a fog, bring about a collision. The safest way in a fog is to lay the ship dead still and ascertain the position of the vessels in your vicinity. I still think that this subdivision (e) ought not to come into the article.

Captain Sampson (United States). Mr. President, I entirely agree with the last gentleman who has spoken. I think that some signal as provided in Article 19, to indicate that a vessel is going full speed astern, is very needful when two ships meet in a fog and approach each other to a point where they become visible. I think that signal would be a good one; but that case would be covered by Article 19. If the vessels are not in sight of each other it seems to me that no useful information can be conveyed by indicating that the ship is going full speed astern. That may be the direction to avoid a collision or it may be the direction to produce a collision.

THE PRESIDENT: Is the Conference ready for the question? The Secretary will please read section (e) again for the information of the Conference.

Section (e) is as follows:

'(e) A steam vessel when her engines are going full speed astern, shall sound on her whistle three short blasts.'

The question was put to the Conference upon section (e) of Article 12, and the Chair being unable to decide, the yeas and nays were called for.

THE PRESIDENT: Five have voted in the affirmative and fifteen in the negative, so the paragraph is lost."

To hold that a vessel is *permitted* to sound three blasts of her whistle to a vessel which she has *not* in sight, would destroy the very purpose for which the rule was adopted. It would mislead the other vessel

into the belief that she was "in sight" of the signaling steamer.

In the court below great stress was laid upon the entries as shown in the engine room log book of the "Virginian." These entries are quoted in the opinion of the court below, evidently for the purpose of sustaining the court's finding that the "Virginian" did not reverse until less than a minute before the collision. The court below quoted both from the bell book and the engine room log book. As it appears from the testimony that only one book was kept in the engine room, the entries in the so-called log book and bell book must of necessity be identical.

It appears from the testimony of Julius Schrag, oiler on the "Virginian," that he entered the time that the different bells were received in the engine room in a small memorandum log book (Apostles, p. 924). This memorandum book was then turned over to the chief engineer of the vessel who makes up the engineer's log and bell book from the entries contained in this memorandum book (Apostles, pp. 908-909). The entries in the bell book made by Schrag, the oiler, are as follows:

"Bell Book.

| Starboard | | Port | |
|---|---|---|---|
| O | 7:57 | O | 7:57 |
| MM | :58 | MM | :58 |
| O | :59 | O | :59 |
| V | 8:09 | V | 8:09 |

"O" indicating "stop," "MM" indicating "full speed astern" and "V" "slow ahead."

It appears from the testimony of this witness that these are the only entries made by him prior to the collision, *and that he did not enter in the memorandum log book in the engine room any entry as to the time of the collision with the "Strathalbyn"* (Apostles, p. 924), and an examination of this memorandum log (Libellant's Exhibit "T"), will show that this is correct.

The chief engineer took this memorandum log book from the engine room and made up the engineer's log, as follows:

Stop 7:57, full astern 7:58, stop 7:59, ahead slow 8:09.
In collision with S. S. "Strathalbyn" at 7:58 p. m.

This latter entry, as the time of the collision with the "Strathalbyn," was, therefore, *not made from any original record kept prior to or at the time of the collision.* It is shown that the "Virginian" *did reverse some time prior to the collision* and that she was reversing at the time of the collision. *This is admitted by the testimony of both Capt. Beecher, pilot of the "Strathalbyn," and Captain Crerar, master of the "Strathalbyn," who both testified that they saw the back water from the "Virginian's" propeller coming forward under the "Virginian's" starboard quarter at the time the "Virginian" blew her three whistles, which*

*was at least half a minute before the collision.* This entry as to the time of the collision was made at least 10 or 15 minutes after the collision had occurred. This must be true, irrespective of the positive testimony to that effect. The memorandum log book was kept in the engine room and when the shock of collision was felt in the engine room, the man in the engine room, of course, had no way of knowing with what vessel they had been in collision, or in fact, that they had actually been in a collision; not even the officers on the bridge knew what vessel had run into the "Virginian" (Apostles, p. 1163), until after the "Flyer" had come alongside, some 10 or 15 minutes after the collision.

The Court, by looking over the memorandum log book kept in the engine room (Libelant's Exhibit "T") will find that all of the entries were made on the full minute, no fractions of a minute being recorded. The testimony of Julius Schrag, the oiler, who kept this memorandum log book, shows that he went into the engine room at a quarter of eight, as he was required to report 15 minutes before going on duty, and that while waiting to go on duty, he made the entries in this book of the various bells as they were received; that he was standing underneath the ventilator, which is some 20 feet away from the desk in the engine room where this memorandum log book is kept, and that the clock from which the time is taken is some 7 or 8 feet back from this desk; that when he heard a bell from the bridge, he would walk over to the indicator

or telegraph to see what order had been received; that he would then walk back to this desk, pick up the memorandum log book and then walk out to where he could see the clock and make the entry (Apostles, pp. 919 and 920); that it would be from 35 to 40 seconds from the time he heard the bell before he would make the entry in the book (Apostles, p. 920). He further testified that he did not attempt to get or enter fractions of a minute in this log book, but would make the entries according to the nearest minute, as it appeared to him at the time of looking at the clock; that such an entry might be anywhere from 30 to 40 seconds from the actual position of the second hand of the clock, in other words, that an entry of 7:57 might be anywhere from 7:56½ to 7:57½; that an entry of 7:58 might be anywhere from 7:57½ to 7:58½, etc. (Apostles, pp. 922-23).

The "Virginian" at that time was on a voyage from Seattle to Tacoma. At the time these signals were heard, the man in the engine room supposed that the vessel was getting close to Tacoma, and that the signals were being given in connection with her navigation to make a landing (Apostles, p. 907). No particular attention was paid to the signals, nor was any effort made to get the entries on the exact second. The testimony of Schrag, the oiler, shows that when he heard the second signal from the bridge to the engine room, he walked over to the telegraph and saw that

it was indicating full speed astern; that he then walked from the telegraph back to the desk, picked up the engine room log and walked back again to where he could see the clock, and that he made the entry in the book the nearest minute, as appeared to him, that is, 7:58, which might be anywhere from 7:57½ to 7:58½, that he then walked back to the desk, replaced the book on the desk and walked back again to his original position alongside of the ventilator, and that he felt the shock of the collision as he was standing alongside of this ventilator. Very shortly afterward he heard, and in the same manner recorded, the signal to stop reversing, at 7:59 or thereabouts. In the light of this testimony as to the manner in which the engine room log was kept, the entries in the log are entirely consistent with the testimony of the officers on the bridge, as we will shortly point out.

That this is the usual method of keeping the engine room log is shown by the testimony of Henry Trippense, chief engineer of the "Virginian." (Apostles, pp. 917-8.) This is also clearly shown by the testimony of Albert W. McGougan, 4th engineer of the "Strathalbyn," who kept the "Strathalbyn's" engine room log on the night of the collision.

Q. Does your engine room clock show seconds as well as minutes.

A. It did.

Q. Do you record seconds when you make a record on the black board?

A. *Not after half a minute.*

Q. By some singular coincidence every signal you got that night, everything you recorded was on the exact minute.

A. That may be.

Q. Then you want us to understand that that might be a half minute or so from the exact time?

A. It certainly was not a half minute; it may have been under it, but not over it.

Q. *Well if it was more than 30 seconds past the minute, you would record it a minute ahead?*

A. *Yes sir, certainly.*

Q. *If it was less than 30 seconds past the minute you would record it on the minute back?*

A. *Yes sir.*

(Apostles, p. 382.) (Italics ours.)

That these engine room entries are not accurate is further shown by the "Strathalbyn's" log book, which shows "stop" at 7:34 and "collision" at 7:38, or a period of four minutes between the stop signal and the collision (Apostles, p. 371). As the "stop" signal was given *after* the "Strathalbyn" had blown her second whistle to the "Virginian" (being one minute after she had blown her first whistle) the entries in the engine room log of the "Strathalbyn" would indicate that *five minutes* elapsed between the "Strathalbyn's" first whistle to the "Virginian" and the collision, which is contrary to all the testimony in this case, the "Strathalbyn's" own officers testifying that from three to three and a half minutes elapsed from her first whistle to the "Virginian" and the collision. The physical facts, distances, speed of vessels, etc., clearly show that this time was less than 3 minutes.

*When it is remembered that no entry of the time of the collision was made in the memorandum engine room log,* but merely the time of stopping, reversing, and stop reversing, we submit that this engine room log, taken in connection with the undisputed testimony as to the usual method of keeping such logs does not sustain the Court's finding that the "Virginian" did not reverse until "less than a minute" before the collision.

In order to sustain such a finding the Court must discredit all of the positive testimony of the "Virginian's" officers and crew. It is always possible to make a mistake as to the exact time elapsing between certain whistles or orders given aboard ship but it is hardly possible to make a mistake as to whether such orders were given before or after hearing a whistle, or to make a mistake as to where a person was standing or what he was doing at the time of hearing such orders or what he did after hearing such order prior to hearing another whistle or order aboard ship. It is such testimony as this which conclusively establishes that the "Virginian" stopped her engines upon hearing the "Strathalbyn's" first whistle and reversed her engines prior to the "Strathalbyn's" second whistle and that she had been reversing at least two minutes prior to the collision. This is upon the theory that the "Strathalbyn's" estimate of three to three and a half minutes from her first whistle to the time of colli-

sion is correct. If, as we believe is clearly demonstrated, this time was only two minutes then the "Virginian" had been reversing two-thirds of this time.

The chief engineer of the "Virginian" testified that he was walking in the alley-way between the engine room and the after boat head; that he heard the first bell in the engine room, but supposing that they were near Tacoma, he paid no particular attention to it, it being the first assistant engineer's watch. Shortly thereafter he heard another bell, opened the door and stepped into the engine room and saw that the engines *at that time were going full speed astern;* that he stood there looking down in the engine room for *some little time,* and then heard four blasts of a whistle from some vessel, which was immediately answered by three blasts of the "Virginian's" whistle (Apostles, pp. 907, 908, 916). This testimony shows positively that the "Virginian's" engines were reversing at the time the "Strathalbyn" blew her danger signals, and that they had been reversing for some little time prior to the time her danger signals were blown. The testimony of this witness further shows that after he heard the four blasts of the "Strathalbyn," he walked down into the engine room to see that his engines were opened full, and that after trying them for that purpose, he walked back out of the engine room into the alleyway and up onto the "Virginian's" deck, and had walked 15 or 20 feet off when he felt the crash of the collision (Apostles, p. 908). This witness further

testified that, loaded light and making the same speed of 53 revolutions per minute, he could stop the "Virginian" in a little over a minute, and that his ship was stopped when the collision occurred (Apostles, p. 909). It thus appears from the testimony of the chief engineer and the oiler that the engines were reversed somewhere between 7:57½ and 7:58½, that the engines were stopped reversing somewhere between 7:58½ and 7:59½, and that the collision occurred some little time after the engines were reversed, and shortly before the engines were stopped reversing. In other words, that the collision occurred just prior to the entry of 7:59, which might be 7:58½ to 7:59½, but that no entry was made in this memorandum log book at the time the collision occurred, and that afterwards the chief engineer, in making up the engineer's log from this memorandum log book, noted that the collision had occurred at 7:58, or in other words, that the collision had occurred between the time of reversing and the time of stopping reversing. His testimony clearly shows that the collision occurred closer to the time of "stopping reversing" than it did to the time of "reversing." The testimony of the officers on the bridge shows that the collision occurred about 7:59½, which is entirely consistent with the testimony of the engine room crew.

The positive testimony of the officers on the bridge of the "Virginian" shows that she had been reversing at least two minutes prior to the collision. Captain

Green, master of the "Virginian," testified that the "Flyer" passed the "Virginian" when she was abeam of Pully Point at 7:53. That he went below at this time (Captain Duffy, the pilot, being in charge), and remained below three minutes when he heard the telegraph from the bridge to the engine room, which would be at 7:56. This was the order to stop the engines. He went on deck immediately and had been on deck talking to the third officer about one-half minute when Pilot Duffy ordered the engines reversed.

Q. When with reference to your coming upon the bridge, was the signal given your ship to go full speed astern?

A. Well, I can only judge by walking—coming up, walking across the bridge; I walked across the bridge and asked the officer what was the trouble, and then walked to the starboard side, and when I got over there, why the pilot had said: "Full speed astern." Well I should think it would not take more than thirty seconds anyhow, at the most.

* * *

Q. How long was your ship going astern before the collision occurred according to your best judgment?

A. I should think about two minutes.

(Apostles, pp. 839-40.)

This would be about 7:57 which coincides with the engine room record. That a minute and a half to two minutes later he heard four blasts from ahead which he immediately answered with three blasts. This would be 7:58½ to 7:59. The collision occurred less than a minute thereafter or between 7:59½ and 8 o'clock.

John D. McLeod, third officer on watch, testified that the "Virginian" stopped at the time of hearing the "Strathalbyn's" first whistle, that she reversed at the second whistle a minute later, that she was going full speed astern when the "Strathalbyn" blew the danger whistle and had been reversing at least two minutes prior to the collision. (Apostles, pp. 891-892-898-299.)

John Shuri, helmsman, testified that about three minutes after the "Flyer" had passed ahead (which would be between 7:56 and 7:57), the engines of the "Virginian" were stopped—about a minute later they were reversed; *that about a minute after the engines were reversed, he heard four blasts ahead* and that about two minutes later the collision occurred. By the wheel house clock the collision occurred at 7:59 (Apostles, pp. 902-3). Captain Duffy, pilot of the "Virginian," testified that he stopped his engines upon hearing the "Strathalbyn's" first whistle (that is first whistle after the "Flyer" had answered the whistle to her), and that he ordered his engines full speed astern *before the "Strathalbyn" blew her second whistle,* that this was about one-half minute after he had stopped his engines (Apostles, pp. 1160-61). *That about a minute after he had reversed his engines he heard the "Strathalbyn's" danger whistle,* which was answered by three whistles and that about one-half minute after the "Virginian" blew the danger whistle the collision occurred (Apostles, p. 1162).

There is one other fact which we desire to call to the Court's attention in this connection and that is the speed of these vessels at the time of contact. The witnesses for the "Strathalbyn" testify that she was practically stopped at the time of collision, while the witnesses for the "Virginian" testify that she was stopped at the time of the collision. As a matter of fact neither vessel had much headway at the moment of impact.

Captain Green testified that the vessels parted instantly (Apostles, pp. 837, 857). Miguel, the lookout, says they separated "as soon as they came together." (Apostles, p. 871.) McLeod, third officer, says: "We went right away from her, we were not together any time at all to speak of." (Apostles, p. 892.) Captain Duffy, the pilot, says: "We were not together over a few seconds and we backed off about three or four hundred feet." (Apostles, p. 1163.) Captain Beecher of the "Strathalbyn" says: "They were together about a minute." (Apostles, p. 218.) Mr. D. W. Dickie, an expert witness called by the "Strathalbyn," testified:

"From ships of the size of the 'Strathalbyn' and of the same metacentric weight approximately, I took the date that the period of roll of the 'Strathalbyn' would be about 20 seconds, and as the length of the damage on the 'Strathalbyn' is about 32 feet, I am led to believe that the speed which the 'Virginian' was traveling was about one knot an hour." (Apostles, p. 765.)

And again:

"What I figured out was that the speed of the 'Virginian' must have been about .95 of a knot to correspond to a period of roll of 20 seconds for the 'Strathalbyn.'" (Apostles, p. 772.)

This is upon the theory that the "Strathalbyn" was dead in the water—in other words that the combined speed of the two vessels at the time of contact was .95 of a knot.

The testimony of the "Starthalbyn's" own witnesses shows that the "Strathalbyn" was *not* stopped at the time of collision. Captain Crerar, of the "Strathalbyn," testified that his vessel, loaded as she was on the night of the collision, would keep her forward motion for about one-half mile or a period of ten minutes with her engines stopped but not reversed (Apostles, p. 262). On the night of the collision it is claimed her engines had been stopped for a minute to a minute and a half and were reversing less than a minute prior to the collision. Certainly, she could not have stopped her forward motion prior to the collision. That she did have forward motion is admitted by the lookout on the "Strathalbyn."

Q. You were still going ahead all the time?
A. We were going ahead but I don't think we moved much at that time (time of last whistle) (Apostles, p. 319).

In fact it was only claimed in the libelant's pleadings that the "Strathalbyn" was "practically stationary at the time of the collision" (Apostles, p. 17).

The testimony of C. P. M. Jack, surveyor for the "Strathalbyn," who surveyed the "Strathalbyn" after the collision and superintended her repairs was:

"I judge that the actual time expired between the time that the stem of the "Virginian" entered the "Strathalbyn" and the time when she cleared, or when she finished the cut, could not be more than a second or, at the outside, two." (Apostles, p. 429.)

This, together with the testimony of the "Virginion's" chief engineer, that the "Virginian" stopped reversing right after the collision, at which time she had backed away 300 feet or more, shows conclusively that she had stopped or practically so prior to the collision and must have been reversing *over one minute prior to the collision.* As we have shown above, the estimates of the various witnesses as to the time elapsing between the various whistles is probably exaggerated. This is only natural at such a time. This testimony conclusively demonstrates:

(1) That the "Virginian" stopped upon hearing the "Strathalbyn's" first whistle.

(2) That the "Virginian" reversed *prior* to hearing the "Strathalbyn's" second whistle.

(3) That the "Virginian" was reversing at the time she heard the "Strathalbyn's" danger whistle, and had been reversing for some time prior thereto.

(4) That the "Virginian" had been reversing for some time prior to blowing her three blasts.

(5) That the "Virginian" had been reversing for a sufficient time prior to the collision to check *all* her forward motion.

Certainly she could not be required to do more than this.

(B) THE "VIRGINIAN" WAS NOT REQUIRED TO REVERSE UNTIL DANGER OF COLLISION WAS APPARENT, AND IF SHE WAS AT FAULT FOR NOT REVERSING SOONER SUCH ERROR WAS *IN EXTREMIS*.

The Court below did not give any grounds for its finding that the "Virginian's" "failure" to reverse sooner was a fault, nor did it find such "failure" to be a contributing fault.

A vessel is only required to stop and reverse when the danger of collision is either apparent or from the close proximity of the vessel is reasonably to be apprehended. There is no express rule requiring a vessel to reverse under the circumstances as disclosed by the testimony in this case. The requirement of stopping and reversing would be a matter of seamanship under Article 29.

The rule is stated in Spencer on Marine Collisions, page 195:

"It may be stated as a general rule that there is no obligation on the part of a steamer to slacken her speed on meeting another whose course and position are known, where there is plenty of room for passage,

when a mere change of the helm is sufficient to put them on courses where collision is impossible."

"The rule is equally clear that where there is doubt or uncertainty as to the position or course of an approaching steamer, *the one observing* should slacken speed until all uncertainty is settled, when there is any reason to apprehend danger."

In the case at bar the "Strathalbyn" had signaled to the "Virginian" with a single blast of her whistle, which under the rules indicated to the "Virginian" that the "Strathalbyn" could *see her* and was changing her course to starboard for the purpose of passing the "Virginian" to port. The "Virginian's" refusal to answer this signal indicated, in the only way permitted by the rules, to the "Strathalbyn" that she, the "Virginian," could not see the "Strathalbyn." The "Strathalbyn" again signaled the "Virginian" with another single blast indicating that she could see the "Virginian" and was again changing her course to pass the "Virginian" port to port. The "Virginian" knew from these signals that the "Strathalbyn" could see her, was changing her ("Strathalbyn's") *course* to starboard with the *intention* of passing the "Virginian" to port and that she considered this maneuver safe, else she would not have repeated her intention after her knowledge that the "Virginian" could not see her. Was there anything in this situation to indicate danger of collision to the "Virginian?" She certainly had a right to assume that if there was any danger in the situation the "Strathalbyn" who had full

knowledge of the situation by *actual sight* of the "Virginian," would indicate such danger to her. In the absence of such signal she had no reason to apprehend danger.

As was said by the later Justice Lurton in the case of *Lake Erie Transportation Co. vs. Gilchrist Transportation Co.,* 142 Fed. 89 (Circuit Court of Appeals, 6th Circuit), at page 96:

"This direction to check, stop or reverse when two vessels are proceeding upon a course which involves risk of collision manifestly does not apply to a situation which is perfectly safe if no departure is made from settled principles of navigation, whether imposed by statute or custom." Britt. M. R. in the case of the *Beryh,* L. R. A. P. Div., 137, 139, very sensibly says of this requirement:

"That it is an instruction as to the conduct of men, and it cannot be that they are to do that thing merely because it is proved afterwards that there was risk of collision, or if there was risk of collision about to be constituted. It must apply if the circumstances are such that an officer of ordinary skill and care would be bound to come to the conclusion that if the ships continue to approach each other there will be risk of collision.

The object of the rule is to avoid risk of collision and we are not to be understood that a vessel is under no duty of obeying the rule in respect to vessels meeting and on, so as to involve risk of collision until the risk of collision has actually arisen. What we mean to say is that the rule applies *whenever it is or ought to be apparent that there will be risk of collision if nothing is done to prevent it.* But under the situation here the rule did not apply until the *Mack* began to depart from her duty and disregard her obligation. Only when this became or ought to have become apparent would a reasonably prudent navigator be charged with notice of risk of collision. As was said

in the case of *The Victory* and *The Plymothian* (68 U. S. 410 XV), the question as to whether the *Rome* may not have been slightly in fault may be a close question. This is often so when subsequent knowledge of what might have prevented disaster tends to qualify the enquiry as to the prior duty to avoid it. But it is not enough to raise a close question as to whether the *Rome* may not have been a few seconds slow in realizing that the *Mack* was not doing what she had every reason for assuming she would do. The fault of the *Mack* being established beyond cavil she is not entitled to divide damages with the *Rome* upon criticism of her management except upon clear proof of some fault not made *in extremis* and reasonable doubts should be resolved in her favor. The Atlantic, 119 Fed. 568 * * * The New York, 147 U. S. 72.

* * *

It was not until such time as the *Rome* ought to have discovered that the *Mack* was coming so near her own course as to probably involve risk of collision that she was under any obligation to apprehend danger and take measures to avoid collision. *The Servia,* 149 U. S. 144, 153 * * *."

The "Virginian" had a right to assume that the "Strathalbyn" would obey the rules and change her course to starboard, in accordance with her whistles, and it was only when the vessels were in the jaws of the collision that she discovered that the "Strathalbyn" was not obeying the rules.

*Marsden on Collisions at Sea* (6th Ed.), p. 325.
*The Victory,* 168 U. S. 410.
*The Gerry,* 161 Fed. 413.

Where the fault of one ship has placed another ship in a position of extreme danger, that other ship will not be held to blame if she has done something

wrong and has not been maneuvered with perfect skill and presence of mind.

*The Favorita,* 18 Wall. 598, 603.
*The Blue Jacket,* 144 U. S. 371, 392.
*The Bywell Castle,* 4 Prob. Div. 219.
*The Ludvig Holberg,* 157 U. S. 60.
*The E. A. Packer,* 49 Fed. 98.
*The Havana,* 54 Fed. 411.
*Maurice B. Grover,* 92 Fed. 678.
*Transfer No.* 8, 96 Fed. 253.
*The Maverick,* 84 Fed. 906, 909.

"It is the duty of the Court, as far as possible to place itself in the position of the master and to endeavor to interpret the rules of navigation in the light of the perils and perplexities which surround him at the time, the impending danger, the excitement of the moment, the necessity for immediate action. When a navigator of experience and good judgment acts, in such circumstances, his actions, if within the limits of reasonable judgment and discretion cannot be imputed to his vessel as a fault. If he acts upon his best judgment at the time it is sufficient, even though subsequent, judicial investigation may show that he might have chosen a more prudent course. A master who the next moment may be sinking with his ship and crew cannot be expected to display the utmost coolness and deliberation. *The Dimock,* 77 Fed. 226; *The City of Augusta,* 80 Fed. 297; *The Iron Chief,* 63 Fed. 289; *The Havana,* 54 Fed. 411; *The Robert Healey,* 51 Fed. 462.

*The Queen Elizabeth,* 122 Fed. 406, 409.

"The cause for such collisions as this must generally be sought for at a time prior to a few moments immediately preceding the impact. After the vessels are in close proximity, either or both, in the stress of sudden danger, may adopt an unwise and imprudent course. *The question is, Who is to blame for bringing*

*the vessels into a position where cool calculation is impossible?*

* * *

*The Vulcan* must be *judged not in the light of the facts as they now appear, but in the light of the facts as they appeared to her master and mate as they stood upon her pilot house on the morning in question.* The conduct of the tug was surely sufficient to puzzle the most accomplished and prudent mariner and the Court is convinced that *The Vulcan* did everything which was possible in the circumstances to prevent the collision. *The City of New York,* 147 U. S. 72." (Italics ours.)

*The Genevieve,* 96 Fed. 859, 860, 864.

In the case at bar there is no dispute but that the "Virginian" executed the proper maneuver in stopping and reversing. The only question is, did she stop and reverse at the proper time? The testimony shows that from the time the 'Strathalbyn" blew her first whistle to the "Virginian" until the impact of collision, 2½ to 3 minutes had elapsed (we have shown this to be not over 2 minutes), the vessels at the time of the first whistle being from one-quarter to one-half mile apart. The court below found this time to have been "three minutes or more" before the collision. (Apostles, p. 1415.) As we have heretofore shown, this time could not have been over two minutes. In cases of peril, it is impossible to ascertain the exact time of the happening of events. The "Virginian's" officers testified that they stopped her engines at the first whistle—this is not disputed and is apparently accepted by the court below. During the ensuing period

between the first and second whistles of approximately one minute the pilot and mate were diligent in their search, both with the naked eye and their night glasses, to ascertain the location, by its lights or the loom, of the signaling vessel. It is their positive testimony that they reversed the "Virginian's" engines prior to the "Strathalbyn's" second whistle. The court found that they should have reversed her engines *at* the second whistle. We submit that the testimony conclusively proves that the "Virginian's" engines were reversed at least at the time of the "Strathalbyn's" second whistle. But even if not reversed at this time, we contend that the "Virginian" was not at fault. She was confronted with the unusual situation of hearing a whistle signal ahead of her from some vessel whose lights could not be seen. Whether it was a large steamer or a small sound steamer, whether it was close to her or at a considerable distance, she was unable to determine. This situation was brought about by the "Strathalbyn's" gross negligence. The officers of the "Virginian" were certainly entitled to a reasonable time to endeavor to locate the unknown vessel, and being unable to locate her to decide what was best to be done. From the time of this second whistle to the collision was not over two minutes, by the "Strathalbyn's" testimony. In all probability it was not over one to one and a half minutes. It is admitted that the "Virginian's" engines were reversing *at the time she blew her three whistles* in answer to the "Strathalbyn's" danger whistle, this being

from one-half to one minute prior to the collision. The "Virginian's" officers testify positively that she was reversing *at least a minute before* the danger signal was given, and had been going "full speed astern" at least two minutes before the collision. (Green, Apostles, p. 836-840; McLeod, Apostles, p. 892; Shuri, Apostles, p. 903; Duffy, Apostles, p. 1161-2, 1176-7.) We submit that it is conclusively proven by the positive testimony and the admissions of Beecher and Crerar as to seeing the "Virginian's" back water, that the "Virginian's" engines were reversed *prior to the sounding of the "Strathalbyn's" danger signal,* which reduces the period in dispute to less than one minute (probably *much less.*) We think that it is holding the "Virginian" to too strict a liability to hold that she is in fault for not reversing her engines one-half to one minute sooner than the court finds she did reverse and to hold that this in any way contributed to the collision.

> "I may say that I believe in all these cases, where it is necessary to stop and reverse that instantaneous stopping and reversing, in compliance with Art. 18, the very instant there is danger of collision is not what is required. A man has to judge whether stopping and reversing is necessary, and he has also to judge whether any other rule applies. I do not think that a court of justice can say that a man has acted wrongly in not stopping and reversing instantaneously, some short time must be allowed."
>
> *The Emery Hass,* 5 Asp. M. C. 216, 218.

In the above case Butt, J., was speaking of reversing in the face of *apparent* danger. In the case at bar

there was no apparent danger or reason to apprehend danger. In any view, the "primative and causative fault" was the "Strathalbyn's" lack of signal lights, her failure to navigate in accordance with her signals and her failure to stop and reverse when her first signal remained unanswered, and her failure to give the danger signal in time, and the fault of the "Virginian," if any, was a mere error of judgment at a moment of danger, which was brought about by the "Strathalbyn," and was not a contributing fault.

As was said by the court in the case of *Union S. S. Co. vs. Latz,* 223 Fed., at page 411:

"The *Gualala* as perhaps subject to criticism that she did not sooner stop and reverse, but the primary and causative fault lies with the Argyll, for which she is alone responsible."

The "Virginian" being in the "dark" as to the "Strathalbyn's" position, and the "Strathalbyn," being "master" of the situation by actual sight of the "Virginian," and having undertaken to control the situation by initiating signals, it was the imperative duty of the "Strathalbyn" to indicate danger by instantly sounding the danger signal, whenever she considered a collision probable. She was in a sense the *burdened* vessel, and the "Virginian" had a right to assume that she would give timely warning of any danger, as she knew the "Virginian" was not in a position to see the danger if it arose.

Article 20 of the Inland Rules provides:

"Where by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed."

Under Article 29, it was the "Strathalbyn's" duty to navigate as the burdened vessel, and the "Virginian" was required to navigate so as not to embarrass the "Strathalbyn" in keeping out of her way. She was not required (and we think it doubtful if she was even permitted) to reverse her engines until danger was apparent, or should, from all the circumstances, have been apprehended.

The "Strathalbyn" had ample room for navigating and full knowledge of the course of the "Virginian," and could and should not only have avoided the collision but even the risk of collision.

*The Columbia,* 174 Fed. 203.

The "Virginian," under the circumstances, had a right to depend upon the "Strathalbyn" to signify danger, if there was apparent risk of a collision, and was not required to reverse her engines until the "Strathalbyn" gave her some indication of danger, or she discovered the danger herself. The absence of any danger signals from the "Srathalbyn" and the repetition of the signals that that vessel was passing to port, were in reality, under the circumstances, assurances to the "Virginian" from the "Strathalbyn" that no danger existed, because, if danger existed, it must

necessarily have been apparent to the "Strathalbyn," and her duty to signal the fact was plain.

When we consider that by the "Strathalbyn's" own testimony the time elapsing from her second whistle to the collision was not over two to two and a half minutes—which is certainly in excess of the actual time by at least one minute—it becomes apparent that any fault or error committed by the "Virginian" at or after the time of the second whistle was an error *in extremis* for which she cannot be held at fault.

*Peck vs. Sanderson,* 17 How. 178.
*The Free State,* 91 U. S. 200.
*Elizabeth Jones,* 112 U. S. 544.
*The Blue Jacket,* 144 U. S. 371.
*The Delaware,* 161 U. S. 459.
*The E. A. Packer,* 49 Fed. 92.
*The Bywell Castle,* 4 Prob. Div. 219.

In the case of *Peck vs. Sanderson* (supra), a steamer and sailing vessel, which carried no lights, came within 200 to 300 yards of each other before the steamer was able to see the sailing vessel, and it was held that any faults or errors committed by the steamer thereafter were *"in extremis."*

In the *"Free State"* supra., it was said:

"Subsequently, and when the vessels were within three hundred feet of each other, and probably within *three minutes* of time, the scow changed her course and practically ran down the bows of the steamer. Then there was risk of collision, but not until then. The steamer in this emergency did stop and reverse, but the time was too short, and the distance too small to prevent the catastrophe."

In the *Blue Jacket,* 144 U. S. 371, it was held that when the danger of collision became apparent *two and a half minutes* before the collision, that the vessels were then *in extremis.*

In the *Delaware,* 161 U. S. 459, the *Talisman* gave her second passing signal to the *Delaware* when the vessels were about *one-eighth of a mile apart,* there being no apparent danger of collision up to this time unless the *Delaware* refused to accept this signal. The court held that the vessels at this time were *in extremis.*

"The second whistle was given so late that the vessels were evidently *in extremis* before a reasonable time had elapsed in which to answer it. In any event there is too much doubt about the fault of the *Talisman* to justify us in apportioning the damages." (p. 470.)

In the case of the *"E. A. Packer,"* 49 Fed. Rep. 92, Circuit Judge Wallace, on the subject of the *Wolverton's* fault, said:

"I understand the rule to be well established that in every case where a vessel, by her own negligence, or the breach of a statutory rule, places another in great peril, the latter will not be held guilty of negligence because at the last moment she did something that contributed to the collision, or omitted to do something that might have avoided it. It has often been held by the Supreme Court that a vessel, which by her own fault causes a sudden peril to another vessel, cannot impute to the other as a fault a measure taken, *in extremis,* although it was a wrong step, and but for it the collision would not have occurred; and that a mistake made in the agony of the collision is regarded as

an error for the vessel causing the peril is altogether responsible." *The Nichols,* 7 Wall. 656; *The Carroll,* 8 Wall. 302; *The City of Paris,* 9 Wall. 634; *The Lucille,* 15 Wall. 676; *The Favorita,* 18 Wall. 598; *The Falcon,* 19 Wall. 75; *The Sea Gull,* 23 Wall. 165. If this is the correct rule, it would seem that if the *Wolverton* was in fault for not reversing, or for porting, or for not starboarding, it was a fault committed in the throes of a collision, which not only does not exonerate the *Packer,* but does not subject the *Wolverton* to liability."

(Decision affirmed on appeal (14 U. S. App. 684), and an application to the Supreme Court for a writ of certiorari was afterwards denied without an opinion (154 U. S. 518).)

In the case of *The Ella B,* 19 Fed. Rep. 782, 794, the court said:

"It is not necessary to decide that he took the wisest and safest course, for the reason that he had not time or opportunity to enter into a nice calculation as to which of the dangers which confronted him was the least to be apprehended. He was placed in a position of extreme peril by the sudden and extraordinary action of the *Sage.* If, in such an exigency, attended as it must have been with excitement and apprehension, he failed to give the most judicious orders or take the wisest course, the failure cannot be imputed to him, but to the vessel which placed him in this hazardous predicament. The conclusion, therefore, reached is that the *Sage* is solely responsible for the accident."

The case of *The Bywell Castle,* 4 Prob. Div. 219, is cited with approval by the Supreme Court of the United States in *The Elizabeth Jones,* 112 U. S. 514, at page 526.

"The last case (*Bywell Castle*) is a well considered judgment by Lords Justice James, Brett and

Cotton in the Court of Appeals, and the rule there formulated is that 'where one ship has, by wrong maneuvers, placed another ship in a position of extreme danger, that other ship will not be held to blame if she has done something wrong, and has not been maneuvered with perfect skill and presence of mind.' "

In the case at bar the risk of collision was not apparent to the "Virginian" until a few seconds prior to the collision, at which time the vessels were certainly *in extremis*. The "Virginian" had no reason to apprehend danger as the "Strathalbyn" by her repeated passing signals had indicated that she was changing her course to port and would pass the "Virginian" in safety. There was nothing in this situation to compel the "Virginian" to stop and reverse.

"When you say that a man must stop and reverse, or I will say slacken his speed, in order to prevent risk of collision, it would be absurd to suppose that it would depend upon the mere fact that there was risk of collision, if the circumstances were such that he could not know there was risk of collision * * *. It is absurd to suppose that you could regulate their conduct, not with regard to what they can see but to what they cannot see."

*The Beryl,* 9 P. D. 137.

The "Virginian" was brought into a position of extreme peril, but the prior faults of the "Strathalbyn" in (1) not having proper signal lights, in (2) allowing her side lights to become obscured by her cargo stanchions, in (3) her faulty and negligent navigation prior to the collision and in (4) giving passing signals without altering her helm—and if the "Virginian" was

guilty of any fault or error, such fault was clearly committed *in extremis.*

*Spencer on Marine Collision,* p. 352.

III.

**Fault cannot be predicated upon the "Virginian's" failure to blow the danger signal.**

ASSIGNMENT OF ERROR 7 AND 8

(a) *The "Virginian" was prohibited by the rules and regulations applicable at the point of collision from blowing a danger signal unless she had the "Strathalbyn" in sight.*

Rule I of Article 18 of the Regulations for Inland Waters provides for passing signals for vessels approaching each other end on or nearly so.

Rule III of Article 18 is as follows:

"If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts—not less than four—of the steam whistle."

Rule V of Article 18 provides for whistles to be given by vessels approaching a bend or curve.

Rule VIII, Article 18, provides for signals to be given when vessels are running in the same direction.

Rule IX, Article 18, is as follows:

"The whistle signals provided in the rules under this article for steam vessels meeting, passing, or overtaking are never to be used except when steamers are in sight of each other and the course and position of each can be determined in the day time by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mist, falling snow or heavy rain storm, when vessels cannot so see each other, fog signals only must be given."

Rule I of the Pilot Rules, applicable to the Inland Waters of the Pacific Coast, is as follows:

"If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts—not less than four—of the steam whistle, the danger signal. Whenever the danger signal is given the engines of both steamers shall be stopped and backed until the headway of the steamers has been checked; nor shall the engines of either steamer be again started ahead until the steamers can safely pass each other and the proper signals for passing have been given, answered and understood."

Rule III of the Pilot Rules is as follows:

"The signal for passing by the blowing of the whistle shall be given and answered by pilots in compliance with these rules, not only when meeting head and head or nearly so, but at all times when the steam vessels are in sight of each other, when passing or meeting at a distance within half a mile of each other, and whether passing to starboard or port. The whistle signals provided in the rules for steam vessels meeting, passing or overtaking are never to be used except when steamers are in sight of each other and the course and position of each can be determined, in the day time by a sight of the vesel itself, or by night by seeing its signal lights. In fog, mist, falling snow or

heavy rain storms, when vessels cannot so see each other, fog signals only must be given."

Rule IX, Article 18, being practically identical with Rule III of the Pilot Rules, clearly provides that none of the signals provided for under Article 18 for vessels meeting, passing or overtaking are to be used except when the vessels are in sight of each other. If Rule III of the Inland Rules, being practically identical with Rule I of the Pilot Rules, applies to vessels *meeting, passing or overtaking,* then it is clear that the danger signal cannot be given except when vessels are in sight of each other. It seems to us equally clear that the word "approaching," used in Rule III of the Inland Rules and Rule I of the Pilot Rules, comes within the provisions of Rule IX of the Inland Rules of "vessels meeting, passing or overtaking." We cannot conceive of a position of two vessels approaching each other where they are not either meeting, passing or overtaking. If this is true, it is clear that the "Virginian" was prohibited by Rule IX of the Inland Rules from giving the "Strathalbyn" a danger signal. The lower court, however, held that Rule IX of the Inland Rules only applied to Rules III and VIII, which, if correct, sustains our contention that Rule IX prohibited the giving of a danger signal unless the approaching vessel could be seen. However, the court further held that the said rule did not prohibit the giving of the danger signals, as provided for in Rule III. The

lower court based its findings largely upon the following reasoning:

"If the prohibition of Rule IX extends to the danger signal provided for by Rule III, then the danger signal could never be used except when the vessels were in sight of each other and 'the course and position of each could be determined,' while Rule III makes the failure to understand the course or intention of the other vesel a prerequisite to using the danger signal. If the construction of Rule IX contended for was adopted no room would be left for the operation of Rule III, which depends upon the failure to 'understand the course and intention of the other' vessel, while Rule IX forbids signals except when the course and position of each can be determined." (Apostles, p. 1433.)

We think that the reasoning of the court is clearly erroneous. As the name "danger signal" implies, this signal was provided for the express purpose of enabling one vessel to notify an approaching vessel of the apparent danger of collision, it implies an actual knowledge of the dangerous position. It is true that Rule IX forbids any signals except when the "course and position" of an approaching vessel can be determined by actual sight. Where the course and position of another vessel has been so determined by actual sight and such course and position are such that the first vessel is either in doubt as to the intention of the approaching vessel as to maintaining such course, and where the first vessel can see that if said course is maintained there is actual danger of collision, then she is required by Rule III to blow the danger signal to

signify to the approaching vessel her doubt as to the intention of such approaching vessel in maintaining this dangerous course, and for the further purpose of arriving at a complete understanding with such approaching vessel as to their respective courses in passing. The most common application of the danger signal is where two vessels are approaching each other and one vessel has initiated a passing agreement which has been accepted by the second vessel and the two vessels then understand that each vessel can see the other, and in this position one of the vessels notes that the approaching vessel is not navigating in accordance with the passing agreement. The first vessel knows the position of the approaching vessel by actual sight, she understands the course of the approaching vessel from her signal, but when she sees that the other vessel is apparently not navigating in accordance with her signal, she is left in doubt as to the approaching vessel's course; that is, whether the approaching vessel intends to continue to navigate contrary to the signal, or whether it is her intention to correct her navigation and navigate in accordance with the passing signal. In this position she blows a danger signal to indicate to the approaching vessel her doubt as to her intention, and to further indicate that in the opinion of the first vessel there is danger of collision unless the approaching vessel changes her course in accordance with the agreement.

This was the exact situation in the case of *Duluth S. S. Co. vs. Pittsburg S. S. Co.,* 180 Fed. 656. It was also the situation in the following cases:

*The Volund,* 181 Fed. 643.
*The New York,* 175 U. S. 187.
*Albert Dumois,* 177 U. S. 240.
*The Strathleven,* 213 Fed. 975.
*Union S. S. Co. vs. Lutz,* 223 Fed. 402.
*The Acilia,* 120 Fed. 455.
*Lake Erie, etc., Co. vs. Gilchrist,* 142 Fed. 89.
*U. S. vs. Erie R. Co.,* 172 Fed. 50.

In each of these cases the course and position of the approaching vessel was determined by actual sight, while the intention of the approaching vessel as to maintaining such course or changing her course was a matter of doubt within the meaning of Rule III. Clearly, the reasoning of the lower court is erroneous. If, however, the reasoning of the lower court and its construction as to the application of this rule is correct, such construction is certainly contrary to the general understanding of navigators. The only testimony in this case as to the construction and application of these rules was given by Captain C. W. Sprague, a practical navigator of over thirty years' experience on the inland waters of Puget Sound. This witness was produced as an expert by claimant and upon cross-examination testified as follows:

"Q. Did it ever occur to you, Captain, that if the lights happened to be out on the vessel you are navigating, you might not know it? (which we think is exactly what happened on the "Strathalbyn," that is,

that her lights were either out or very dim and were obstructed by her cargo stanchions so that they could not be seen from the head, and that neither Captain Beecher, her pilot, nor her master knew these facts and that this did not occur to them until it was too late to avoid a collision).

A. Yes.

Q. And under those circumstances supposing the lights were out on the "Strathalbyn," wouldn't it have been the business of the "Virginian," when she didn't see them, as soon as possible to blow a danger whistle?

A. Well, I couldn't say that it would.

Q. Wouldn't you do it if you were in the "Virginian's" place?

A. No, I would not talk to a person which I could not address my conversation to,"

which is the construction placed on this rule by the navigating officers of the "Virginian."

If the court's construction of the application of the various rules under Article 18 is correct—that is, that the restriction as to actual "sight" contained in Rule IX, only applies to Rule 1 (we take it that the court in its opinion intended to say Rule I instead of Rule III) and VIII, and does not apply to Rule III—then the wording of these rules is very ambiguous, as the court's construction is directly contrary to the construction placed on these rules by competent mariners. We cannot believe that these rules are so loosely drawn; if it had been the intention to except Rule III from the restrictions of Rule IX, such exception would have been clearly stated in either Rule IX or Rule III.

It has taken five pages of a well considered opinion of the lower court to arrive at the conclusion that

the restrictions of Rule IX as to actual "sight" did not apply to Rule III, and that the signals provided for under Rule III should have been given by the "Virginian," even though she could not *see* either the "Strathalbyn" or her signal lights. If this rule admits of the serious doubts implied in the court's lengthy consideration of the same, how could it be expected that the navigating officers of a vessel in the agony of an impending collision should interpret the rule in the thorough manner in which the court below has considered it? This is especially true when the only testimony in this case shows that the court's construction is contrary to the usual construction placed on this rule by competent mariners. If these rules will admit of the construction placed upon them by the lower court, then certainly the rules are not sufficiently clear to penalize a vessel *in extremis* for her failure to understand and construe these rules in the same way as the lower court has construed them. By analogy to Article 28 of the International Rules, we think it perfectly clear that the lower court's construction is not the correct one. The International Rules do not contain or provide for any signal such as the so-called "Danger signal." They do contain, however, provisions for signals to indicate changes in courses to be blown by vessels approaching each other so as to involve risk of collision when such vessels are *in sight* of each other. They also contain a provision for signals of three blasts to indicate that a vessel's engines are reversing full speed

astern (Article 28). This latter signal of three blasts is as much a "danger whistle" as the signal provided for under Rule III, Article 18 of the Inland Rules, and is the only signal provided in the International Rules to indicate danger.

At the International Marine Conference of 1889, at which conference the present International Rules for the prevention of collisions at sea were framed, the proposal was made by the committee on sound signals that vessels in "fog or mist or falling snow" (not in sight of each other) should be required to indicate by three short blasts when their engines were going full speed astern. The discussion of the delegates in connection with this proposal is set out fully on pages 96-97 of this brief. This discussion as to the only danger signal permitted by the International Rules is instructive in construing danger signals provided by the Inland Rules, and we take the liberty of again quoting a portion of this discussion:

"Admiral Nares (Great Britain): Mr. President, the intention of the committee is this: Under Article 19 the signal has been made compulsory, provided a vessel does a certain action, provided she starboards, or ports, or goes full speed astern; but while Article 19 has been made compulsory, it is not to be allowed except when the other vessel is in sight. The committee want to go beyond that. They will not allow the starboard, or the port signal to be made to a vessel which is not in sight, but they see no reason why the signal, 'I am going full speed astern,' should not be made whether the other vessel is in sight or not. You have already, under Article 12, told the vessel to stop

her engines. Whether that will include that she will stop altogether will depend upon the captain. Suppose the captain goes full speed astern instead of merely stopping his way; why should he not indicate that action to the other vessel which is not in sight? You have already given him another signal: 'You may feel your way past me with caution and I will stop by.' So that it is all dove-tailed together.

Under Article 19 you have made it compulsory to give the signals for the port and the starboard tack. I think they can only be made when the vessel is in sight; but yet this third signal, 'I am going full speed astern,' may be made. While I am speaking about this there is one alteration which has been made. I am not quite clear whether we had a discussion about it or not; but I think we did. I think that it came up in the Conference, that the term 'I am' was not definite and we have altered it to 'my engines' are going full speed astern. We have kept the three short blasts which have been in use for ages.

Captain Malmberg (Sweden): Mr. President, I am still of the opinion that section (e) ought not to come into the regulations, because if a steamer, according to the first paragraph in this article, stops her engines and then goes astern, section (b) covers her situation as being stopped—no, I am mistaken in that. However, I should not like to introduce into rules like these a maneuver to be made by a steamer not having the other vessel in sight, as the issue of such a maneuver may, in a fog, bring about a collision. The safest way in a fog is to lay the ship dead still and ascertain the position of the vessels in your vicinity. I still think that this subdivision (e) ought not to come into the article.

Captain Sampson (United States): Mr. President, I entirely agree with the last gentleman who has spoken. I think that some signal as provided in Article 19, to indicate that a vessel is going full speed astern, is very needful when two ships meet in a fog and approach each other to a point where they become visible. I think that signal would be a good one; but that case would be covered by Article 19. If the vessels are not in sight of each other it seems to me that no useful informa-

tion can be conveyed by indicating that the ship is going full speed astern. That may be the direction to avoid a collision or it may be the direction to produce a collision.

THE PRESIDENT: Is the Conference ready for the question? The Secretary will please read section (e) again for the information of the Conference.

Section (e) is as follows:

'(e) A steam vessel when her engines are going full speed astern, shall sound on her whistle three short blasts.'

The question was put to the Conference upon section (e) of Article 12, and the Chair being unable to decide, the yeas and nays were called for.

THE PRESIDENT: Five have voted in the affirmative and fifteen in the negative, so the paragraph is lost."

If, in the opinion of the delegates to this Conference, it is unwise to permit the blowing of the three blast whistle provided in Article 28 of the International Rules, except when vessels are *in sight* of each other, then it must be equally unwise to permit the danger signal provided for in the Inland Rules to be blown except when the vessels are *in sight* of each other, and we submit that such a restriction was intended and provided for in Rule IX of Article 18 of the Inland Rules. The interpretation and construction of Rule III of Article 18 should be made in the light of the decision of the Conference on this point.

## (b) THE "VIRGINIAN" WAS NOT IN DOUBT AS TO THE COURSE AND INTENTION OF THE "STRATHALBYN."

It will be noted that Rule III, if applicable at all, only applies to cases where a vessel fails to understand

the course and intention of the approaching vessel. The "Virginian's" officers knew that there was a vessel somewhere ahead of them and assumed that such vessel was approaching. They knew from the whistles blown to them by the approaching vessel, that is, a single blast, that this vessel was changing her *course* to starboard, with the *intention* of passing her port to port. The lower court has found:

"On account of the general route of vessels at the point of collision, the signals exchanged between the "Strathalbyn" and "Flyer," indicating a passage port to port, and the signals given to the "Virginian" by the "Strathalbyn," the "Virginian" must have known approximately the general *position* and *course* of the "Strathalbyn." (Apostles, p. 1429.)

"It is shown that those navigating the 'Virginian' knew a vessel was *approaching* from ahead and that they knew the vessel's *intention* from her whistle was to pass the 'Virginian' port to port." (Apostles, p. 1432.)

The court then uses the following language:

"But, not being able to either see the approaching vessel or her lights, they could not understand her course."

This latter statement is directly contrary to the finding of the court above quoted from page 1429, and the same is erroneous, as the "Strathalbyn" had clearly indicated her course by blowing one whistle, which, under the Pilot Rules, indicated the intention of the "Strathalbyn" to direct her course to starboard.

"One short blast of the whistle signifies the intention of or assent to the steamer first giving the signal to direct course to own starboard."

Therefore, it is clear that the "Virginian" knew the *course* and *intention* of the "Strathalbyn." The only information which she did not possess was the exact position of the "Strathalbyn."

Rule III clearly does not apply to such a case, as it makes a doubt as to "course and intention" of the other vessel a prerequisite of blowing the danger signal. We therefore assert that the danger signal did not apply to the situation of the two vessels in the case at bar.

(c) FAULT CANNOT BE PREDICATED UPON FAILURE OF ONE VESSEL TO SOUND AN ALARM WHEN THE DEVELOPING DANGER IS NOT APPARENT TO IT BUT IS APPARENT TO THE APPROACHING VESSEL.

The rule is stated in Spencer on Marine Collisions, at page 190, as follows:

"It is the duty of a steamer to give warning signals to approaching vessels when it is in a situation involving danger, especially in such position that the danger threatened is of such a nature *as not to be observable by the approaching boat*" (Italics ours.)

*The Blue Bonnet,* 10 Fed. 150.
*The Chicago,* 61 Fed. 521.

In the case at bar, the "Strathalbyn" had had the "Virginian" in full sight for two miles or more, and after exchanging passing signals with the "Flyer" and when she was abeam of the "Flyer," had indicated to the "Virginian" by blowing her passing whistle that she had the "Virginian" in sight and that she, the "Strathalbyn," was changing her course to starboard for the purpose of passing the "Virginian." This blast was not answered by the "Virginian," which, under the rules above quoted, told the "Strathalbyn" in the only way permitted by the rules that she, the "Strathalbyn," could not be seen by the "Virginian." The "Strathalbyn" had heard the "Virginian" reply to the "Flyer's" whistle when the "Flyer" and "Virginian" were off of Pulley Point, so she knew there was someone aboard the "Virginian" attending to the signals. The "Strathalbyn" could not have been over (probably considerably less than) one-half a mile away at this time. The "Flyer" had heard and answered the "Strathalbyn's" signal at about this same distance away, so the "Strathalbyn" must have known that its whistle was heard by the "Virginian." (Apostles, p. 224.) So the only conclusion a competent officer aboard the "Strathalbyn" could have come to was that the "Virginian" had been unable to see the "Strathalbyn" or her signal lights; otherwise, they would have been compelled, under the rules, to promptly answer the signal. At this time the "Virginian" knew that

the "Strathalbyn" could see her and knew her movements and course by her signal and range lights, and, as stated above, she had signified that she could not see the "Strathalbyn." Thereafter, the "Strathalbyn" was master of the situation and was compelled to navigate with extreme caution. She had no right to bring the vessels into a dangerous situation, and if she considered that there was any danger, it was her positive duty to have indicated this danger to the "Virginian," who was in the dark, so to speak, as to the "Strathalbyn's" position. If the "Strathalbyn," with full knowledge of the situation, did not consider that there was danger, certainly the "Virginian," without knowledge as to the "Strathalbyn's" position, had no reason to apprehend danger.

Captain C. W. Sprague, the expert navigator produced by claimant, testified upon cross-examination as follows:

"Q. When you hear a whistle ahead and then another whistle ahead and then another whistle ahead—
A. I would stop my ship and kill her.
Q. You would not blow danger signals to indicate that you could not see that ship ahead?
A. No.
Q. To the man who was on her?
A. No.
Q. If the man who was on the ship ahead—
A. (Interrupting). I don't realize a danger which does not exist so far as my apprehension goes. I can't see this fellow."
(Apostles, p. 1389-90.)

And again:

"Q. Wouldn't you blow danger whistles if you were in doubt?

A. No, I don't think I would.

Q. Don't the rules require that when you are in doubt of the course or direction of another ship that you shall blow danger signals?

A. *If you know you are in danger.*

Q. But it does not say that, does it—if you know you are in danger—it says when you are in doubt of the course and direction of another ship, you should blow your whistles, doesn't it?

* * *

A. I don't blow a danger whistle until the impulse hits me that *such is the case.*

* * *

Q. I want to know if you are in doubt of the course and direction of a ship, if you, as a navigator, would blow danger signals?

A. *I can't blow a danger signal* until it occurs to me that danger exists."

(Apostles, p. 1384.) (Italics ours.)

Mr. Smith, chief officer of the S. S. Daring, which passed the "Strathalbyn" prior to the collision, testified on cross-examination:

"Would that time come when he would begin to blow whistles if I considered that it was getting unsafe for the vessel that I was on by stopping her and backing her up, it would not be necessary for me to signify him as long as he did not consider he was in danger. If he would not consider that he was in any danger, or rather that I was by approaching him, why, he (I) would not be called upon to blow any whistle, would he (I)?" (Apostles, p. 1299.)

The testimony of the "Virginian's" officers was that when they heard a whistle from ahead (which was answered by the "Flyer"), it put them on the alert and they endeavored to pick up the object which had blown

this whistle. Not having been able to see any lights or any vessel ahead, that upon hearing another whistle, which was apparently for them, they immediately stopped the "Virginian's" engines and endeavored, with the aid of the naked eye and night glasses, to locate the approaching vessel. Not being able to do so, the engines were put full speed astern, at which time another whistle was heard from ahead. They continued to keep a sharp lookout and a minute or more later they heard four blasts and that up to the time of hearing these four blasts they had neither heard nor seen anything to indicate any danger.

"However that may be, all danger existing at any time from any cause was obvious to the *Townsend* at least as early and as clearly as to the *Moore*. As to the gradual drawing together of the boats on converging courses, the *Townsend* knew that she had not ported on the range intersection, while the *Moore* could not know this fact until the convergence became prominent. As to the sudden swing of the *Townsend's* stern at the moment when most dangerous, this could not be anticipated by the *Moore*. Hence, fault cannot be predicated on the *Moore's* failure to sound an alarm."

*The Queen City,* 189 Fed. 653, 660.

In the case at bar the "Virginian" had no means of knowing that the vessels were in dangerous proximity nor did she have any reason to anticipate danger; the "Strathalbyn" knew these facts by actual sight—she had not signified to the "Virginian" that there was danger and we submit that fault cannot be predicated on the "Virginian's" failure to blow the danger whistle.

It seems absurd to hold that the "Virginian" was required by Rule III of Article 18 to blow danger signals under these circumstances. As was said by the Master of the Rolls in *The Beryl,* 9 P. D. 137, 138, in speaking of the Regulations to prevent collisions at Sea:

"When you speak of rules which are to regulate the conduct of people, those rules can only apply to circumstances which must or ought to be known to the parties at the time; you cannot regulate the conduct of people as to *unknown circumstances.* When you instruct people, you instruct them as to what they ought to do, under circumstances which are or ought to be before them. When you say that a man must stop and reverse, or, I will say, slacken his speed, in order to prevent risk of collision, it would be absurd to suppose that it would depend upon the mere fact that there was risk of collision, *if the circumstances were such that he could not know there was risk of collision.* I put some instances during the argument to show that that was so. * * * How can you regulate their conduct if neither can see the other until they are close together? It is absurd to suppose that you could regulate their conduct, not with regard to what they can see, but to what they cannot see. Therefore the consideration *must always be in these cases, not whether the rule was in fact applicable, but were the circumstances such that it ought to have been present to the mind of the person in charge that it was applicable."*

(d) THE DANGER SIGNAL WOULD NOT HAVE GIVEN THE "STRATHALBYN" ANY ADDITIONAL INFORMATION, AND THE FAILURE TO GIVE SUCH SIGNAL DID NOT IN ANY WAY CONTRIBUTE TO THE COLLISION.

It is elementary law that fault cannot be predicated on an error or even a breach of the statutory regulation which did not in any way contribute to the collision.

*Straits of Dover,* 120 Fed. p —
*City of Washington,* 92 U. S. 31.
*The Yang Tsze, etc., Co. vs. Furness, etc., Co.,* 215 Fed. 859, 863.

The "Strathalbyn" claimed in the court below that the "Virginian" should have blown the danger signal to the "Strathalbyn" to indicate to the "Strathalbyn" that her lights were not seen. It was for this sole purpose that it was claimed that the "Virginian" should have blown the danger signal. The "Virginian" had indicated to the "Strathalbyn" in the only way permitted or provided for in the rules and regulations that she could not see her lights nor the vessel itself; that is, by her refusal to answer the "Strathalbyn's" passing signal, which the lower court held she was correct in doing. (Apostles, p. 1434.) The "Strathalbyn" had the "Virginian" in full view, knew her exact location and could determine her exact course from the bearing of her signal lights. She knew from the "Vir-

ginian's" failure to answer her signals that the "Virginian" could not see the "Strathalbyn." The danger signal could not possibly have given the "Strathalbyn" any further or additional information.

"It cannot be said that the pilot of the *Crathorne* failed to understand the course or intention of the *Acilia* before he could make out that she was under a starboard helm, because he had a right to presume, until he received a signal of two blasts, that she was going to obey the statute and keep to her proper side of the channel. Therefore, it was not a fault that he did not blow danger signals. He blew one blast and that was not heard on the bridge of the *Acilia,* because of the sound of her own whistle, but even if danger signals could have been heard, it does not seem possible that they would have afforded any information to those on the *Acilia.* The pilot of the *Acilia* says he already knew there was danger when he had starboarded his helm and further that he could not shut off the *Acilia's* whistle and so could not give notice of the altered course he had entered upon. But the omission to give the danger signal, if indeed they ought, under the rule to have given it, is not sufficient to charge the *Crathorne* with fault, as it clearly appears that the omission in no way contributed to the disaster, as the pilot of the *Acilia* already knew all the danger signals could have conveyed to him."

*The City of Washington,* 92 U. S. 31, 37; 23 L. ed. 600.

"To put upon the Crathorne the responsibility for the failure of her pilot to do all that any navigator might possibly have done, if he had understood then what is understood now, after the unlooked for intention of the *Acilia's* pilot had been explained and the cause of the prolonged whistle had been discovered, is, as was said by Lord Esher, Master of the Rolls on the *Stephenotis* and the *Horton,* cited in *The Victory,* on page 428 of 168 U. S., 'requiring men to do

what no man ought to be expected to do under such circumstances.' "

*The Acilia,* 120 Fed. 455, 460.

Nor did the failure of the "Virginian" to blow the danger whistle in any way contribute to this collision. The pilot of the "Strathalbyn" knew, when his first whistle remained unanswered, that there was danger, and this court must find, under the authority of *The New York,* 175 U. S. 187, and the *Duluth S. S. Co. vs. Pittsburg S. S. Co.,* 180 Fed. 656 (and cases there cited) that the "Strathalbyn" should have stopped and reversed not later than her second whistle. The court below held that the "Virginian" should have blown the danger signal at the time of hearing this second whistle. Even if the "Virginian" had blown the danger whistle at the time of hearing the "Strathalbyn's" second whistle, what action could the "Strathalbyn" have taken which she was not already required to take? The "Virginian" should not be held to anticipate that the "Strathalbyn" would fail to act lawfully and certainly should not be required, in anticipation of such failure on the part of the "Strathalbyn" to take extreme methods, such as blowing the danger whistle, to warn the "Strathalbyn" to perform her duty, especially as the "Virginian" had no means of knowing that the "Strathalbyn" was not performing her duty, or that there was in fact any danger.

We submit that the failure of the "Virginian" to blow the danger signal, if a fault, did not in any way contribute to this collision.

## IV.

## DECREE OF LOWER COURT

**Assignments of Error, 2, 3, 10, 11, 12 ,13, 14, 15, 16.**

(a) The "Virginian" should recover her entire damages.

The "Strathalbyn" was guilty of primary causative faults sufficient to fully account for the collision and the burden was on her to show that such faults were not the sole cause of this collision. This burden she has not sustained. It seems clear, therefore, that under the facts as disclosed by the testimony in this case, and the rules of law applicable thereto, the trial court erred in entering judgment against the appellant for one-half of the total damages. It being clearly established that the "Virginian" was not guilty of any contributing fault, she is entitled to recover her full damages from the "Strathalbyn."

"The fault of the launch is clear and manifest. It was the primary cause of the collision. The burden of proof rests upon those who contend that fault on the part of the tug also contributed to the disaster. That burden has not been sustained. It follows that the tug and scow must be held free from blame."

*The Southern,* 224 Fed. 210, 216.
*City of New York,* 147 U. S. 72.
*The Umbria,* 166 U. S. 404.
*The Victory,* 168 U. S. 423.

(b) The court erred in allowing either the "Strathalbyn" or the cargo owner any recovery against the "Virginian."

If the court finds that the "Strathalbyn" was guilty of primary causative faults sufficient to account for the collision and that the "Virginian" was not guilty of any contributory fault, then it follows that neither the "Strathalbyn" nor the cargo owner is entitled to any recovery against the "Virginian" or the stipulator on its release bond.

(c) The trial court erred in decreeing that the Strathalbyn Steamship Company, Ltd., as bailee of cargo, libelant in Cause 1052, recover from the American-Hawaiian Steamship Company, claimant, the full amount of its damage. The court also erred in decreeing that the Strathalbyn Steamship Company, Ltd., libelant in Cause 1036, recover from appellant one-half of its excess of damages over the damages sustained by the "Virginian," without a reduction therefrom of one-half the cargo damage.

In cases of mutual fault the rule as to division of damages is too well settled to admit of any doubt. The damages sustained by all parties are added into one amount and the party sustaining the largest amount of damage is entitled to recover one-half of its excess from the other party. This rule is stated in *The North Star,* 106 U. S. 17, as follows:

"According to the general maritime law, in cases of collision occurring by the fault of both parties, the entire damage to both ships is added together in one common mass and equally divided between them, and thereupon arises the liability of one party to pay the other such sum as is necessary to equalize the burden. This is a rule of mutual liability between the parties."

See *The Chattahoochee,* 173 U. S. 540.

In the case at bar, the trial court found both vessels at fault and ordered that the damages be divided. In the consolidated causes the damages to be divided were those sustained by the "Strathalbyn" and its owners, by the "Virginian" and its owners and by the cargo owner. These damages should have been lumped in one sum and divided between the "Strathalbyn" and the "Virginian," there being no question but what the cargo owner, under the decree of mutual fault, is entitled to its full damages. Upon this division of damages the "Strathalbyn" was entitled to a decree against the "Virginian" for one-half of its excess damages over the damages sustained by the "Virginian," each party standing one-half of the cargo damage. In the decree entered by the trial court it will be noted that the cargo owner was allowed its full damages against the owners of the "Virginian" and that the "Strathalbyn" was allowed one-half of its excess damages against the owners of the "Virginian," without any allowance or deduction therefrom by reason of the full amount of the cargo damage being allowed against the "Virginian." It is true that the court,

by a peculiar provision in the decree, sought to prevent the Strathalbyn Steamship Company, Ltd., from levying immediate execution for the full amount decreed it by providing that execution should only issue, *now,* for the amount decreed it less one-half the cargo damage. This deduction, however, by the terms of the decree, only applies until the *filing of the mandate* of the appellate court. In other words, if this court should affirm the decision of the trial court immediately upon the filing of the mandate, the Strathalbyn Steamship Company, Ltd., would be entitled to execution for one-half of its excess damages without any deduction whatever because of the cargo damage, and the owner of the cargo would be entitled to immediate execution for the full amount of its damage against the "Virginian." The decree, as it now stands, makes the "Virginian" liable for the full amount of the cargo damage without any reduction from the amount awarded the "Strathalbyn" as one-half of its excess damages. In other words, it is liable for $4,126.92 in excess of the liability of the "Strathalbyn." The only way the owners of the "Virginian" can prevent the payment of this excess liability is by paying the full amount of the cargo damage prior to the filing of the mandate of this court, in case the decree is affirmed. It might very well happen that the owners of the "Virginian" would require some little time to secure funds to satisfy this decree. Under the form of the

decree, if these funds were not secured immediately upon the filing of the mandate, then the owners of the "Virginian" would be liable to immediate execution, both by the Strathalbyn Steamship Company, Ltd., and by the cargo owner, and would necessarily be in the position of having to seek a recovery from the owners of the "Strathalbyn" of one-half of the cargo damage in a separate suit.

We submit that the form of decree is manifestly unjust and contrary to the rule as laid down in *The North Star*. Under the rule as laid down in that case, either the cargo damage should be divided between the parties, or, if the full amount of the cargo damage should be decreed against the "Virginian," the "Virginian" is entitled to a reduction *in the decree* of one-half of this cargo damage from the amount awarded to the "Strathalbyn."

(d) The court further erred in refusing to dismiss Cause 1052 and in allowing the Strathalbyn Steamship Company, Ltd., interest on its damages and costs, and in allowing the Strathalbyn Steamship Company, Ltd., as bailee of cargo, interest on its damages and costs.

In admiralty proceedings the allowance of costs is entirely within the discretion of the court, and the circumstances of each case must govern the court in the matter of awarding costs. This is also true as to the allowance of interest on damages.

"In admiralty, interest on claims arising out of breach of contract is a matter of right, but the allowance of interest on damages in cases of collision or other unliquidated damages is always in the discretion of the court and may be allowed or disallowed by the District Court."

*Benedict on Admiralty,* p. 319.
*Spencer on Marine Collisions,* p. 381.
*The Scotland,* 118 U. S. 507.
*The Albert Dumois,* 177 U. S. 244.
*The Itasca,* 117 Fed. 892.

"Where substantial justice cannot be done without such allowance the courts uniformly allow it. Where such allowance would increase the damages beyond what appears just as between the parties, courts will decline to allow it."

*Spencer on Marine Collisions,* p. 377.

It is true that an appellate court will not consider an appeal from the allowance of costs or interest by a lower court where this is the only question raised on the appeal, but such appellate courts will consider the allowance of interest and costs in considering an appeal from the entire decree of the lower court. In the case at bar the court found both vessels at fault and ordered that the damages be divided. However, upon the findings of the lower court, the faults found against the "Strathalbyn" were much more gross than the faults found against the "Virginian." The court found the "Strathalbyn" primarily responsible for the collision, in that she did not have proper lights and in that such lights were obscured. It further found that this was the primary proximate cause of the collision. On the other hand, the only faults found against the "Vir-

ginian" were that she did not reverse as soon as she should have and that she failed to blow a danger signal. While we feel that it clearly appears from the testimony in this case and the law applicable thereto, that neither of the alleged faults on the part of the "Virginian" in any way contributed to this collision, still, if it could be held that such alleged faults were contributing faults, the same were mere errors of judgment at a time of extreme peril, brought about by the gross negligence of the "Strathalbyn," which, if not actually *in extremis,* were very nearly so.

The damages sustained by the "Strathalbyn" were largely in excess of the damages sustained by the "Virginian," as a result of which the "Virginian," by this decree, is made liable for approximately $22,000 more than its own damages, which sum it must, under the decree, contribute to the "Strathalbyn." By an allowance of interest and costs to the "Strathalbyn," it would be required to pay a further sum of approximately $5,000, which, under the decree, it must contribute to the "Strathalbyn." In other words, where its fault, if any, was slight, in comparison with the "Strathalbyn," under the form of the decree of the lower court it is required to pay the "Strathalbyn" in excess of its own damages the sum of approximately $22,000, and if costs and interest are allowed approximately the sum of $27,000.

We submit that if the equities of any case ever required that interest and costs should be disallowed, they should be disallowed in the case at bar, in case the decree is confirmed.

In connection with allowance of interest and costs of the cargo owner, we would call the court's attention to the pleadings in this case. The original libel in Cause 1036 expressly covered not only damage to the steamship "Strathalbyn," but also damage to the cargo aboard of her, which was expressly mentioned in paragraph V of said libel, the total amount of all damage being claimed at $160,000. The owners of the "Virginian," in order to secure a release of the said vessel, were required to execute and file a release bond of $175,000. Sometime subsequent to the filing of this original libel, the Strathalbyn Steamship Company, Ltd., appeared as bailee of cargo and filed another libel against the "Virginian," claiming damages to cargo in the sum of $100,000, upon the filing of which libel the owners of the "Virginian" were required to execute and file another bond for the sum of $110,000. At the time this second libel was filed, the claimant of the "Virginian," by motion setting out the facts as we have stated them above, asked that the libel in Cause 1052, which it alleged was an amplification of the relief sought in the libel of Cause 1036, be dismissed. The court, in passing upon this motion, held that this contention could be best determined when

the causes were heard upon their merits and that "the court can then make any order that the justice of the case may require."

The damages actually sustained by the "Strathalbyn" amounted to approximately $100,000, and with interest and costs to approximately $128,000. The damages sustained by the cargo amounted to approximately $6,800, which, together with interest and costs, amounted to the sum of $8,200, or a total damage of less than $110,000, or, with interest and costs of less than $140,000. There can be no question but that the allegations of the libelant in Cause 1036 are broad enough to cover damage to the cargo, and it is perfectly apparent that the bond filed in this cause for the sum of $175,000 was more than ample to cover both damage to the steamer and her cargo.

We submit that the filing of the libel in Cause 1052 was entirely unnecessary, and that the American-Hawaiian Steamship Company should be allowed its costs and interest in said Cause 1052 as against the owner of the cargo, and that costs or interest should be disallowed to the said libelant. 1 *Corpus Juris,* p. 1357.

Under the facts as disclosed by the testimony in this case and the law applicable thereto, we respectfully submit that the steamship "Strathalbyn" was guilty of primary gross fault, which was fully sufficient to account for this collision and that she has not sustained

the burden of showing that her said faults were not the sole cause of said collision, but that, on the other hand, it is conclusively established that such faults were the sole cause of the collision; and that the steamship "Virginian" was not guilty of any fault whatever, or that if she was guilty of fault, such fault in no way contributed to this collision, and that, therefore, the libel of the Strathalbyn Steamship Company, Ltd., in Cause 1036 should be dismissed, and that the libel of the Strathalbyn Steamship Company, Ltd., as bailee of cargo, in Cause 1052, should be dismissed, and that the American-Hawaiian Steamship Company, claimant and cross-libelant in the court below, and appellant here, should recover the full amount of its damages, together with interest thereon and costs of suit, against the Strathalbyn Steamship Company, Ltd., and the stipulator on its bond, and that it should recover the full amount of its costs in Cause 1052 against the Strathalbyn Steamship Company, Ltd., as bailee of cargo, and the stipulator on its bond.

Respectfully submitted,

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